

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES F. O'BRIEN and DEPARTMENT OF THE AIR FORCE,
HILL AIR FORCE BASE, Utah

*Docket No. 96-841; Submitted on the Record;
Issued April 28, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an additional hearing loss causally related to his employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Appellant, a 55-year-old industrial engineering technician, filed an occupational disease claim in 1987 for a schedule award based on hearing loss causally related to his employment. Appellant received a schedule award for an 11 percent monaural loss of hearing in his left ear based on the results of an audiogram administered on July 14, 1988. On December 20, 1987 appellant was transferred from the machine shop, an area where he had been exposed to hazardous noise for 17 1/2 years, to a job working in an office environment in which he was not regularly exposed to loud noise.

On March 16, 1994 appellant filed a Form CA-2 notice of occupational disease and claim for compensation, alleging that he sustained additional hearing loss causally related to factors of his federal employment.

In a letter dated September 11, 1995, the Office referred appellant and a statement of accepted facts to Dr. Leland Johnson, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant. The evaluation was scheduled for September 29, 1995.

The audiologist performing the September 29, 1995 audiogram for Dr. Johnson noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz), the following thresholds were reported: right ear - 10, 15, 25, and 45 decibels (db): left ear - 30, 25, 55 and 80 decibels.

In a medical report dated September 29, 1995, Dr. Johnson compared appellant's current hearing loss to that indicated by the July 14, 1988 audiogram. Dr. Johnson indicated that results of the current audiogram showed no significant change in thresholds in the mid-high frequencies, and a change in the left ear in the low frequencies, specifically at 500 Hz from 10 dB to 30 dB and at 1000 Hz from 10 dB to 25 dB. Dr. Johnson stated that the hearing loss noted was in excess of that based on presbycusis, especially in the left ear and also compared with the hearing loss noted in prior audiograms. Dr. Johnson opined that appellant's workplace noise exposure since December 20, 1987, when he was removed from the noise hazard area, would not be of sufficient intensity and duration to produce a noise-induced hearing loss. Dr. Johnson concluded that appellant's sensorineural hearing loss was not due to noise exposure in his federal employment because he had not demonstrated significant change in hearing thresholds since the July 14, 1988 audiogram. Dr. Johnson reasoned that the increased hearing loss in the low frequencies in the left ear was not explained by noise exposure because he was not in a noise hazard area from December 20, 1987 until his retirement on December 29, 1994.

On October 30, 1995 the Office medical adviser issued a report based on Dr. Johnson's report and test results. The Office medical adviser noted his concurrence with the Dr. Johnson's rationale, and concluded that appellant did not have any additional hearing loss causally related to his employment.

In a decision dated November 7, 1994, the Office accepted that appellant had an employment-related hearing loss but determined that appellant's hearing loss was not sufficient to warrant an additional schedule award under the Federal Employees' Compensation Act.¹ The Office indicated that hearing aids were not authorized.

Appellant applied for reconsideration of the Office's November 7, 1995 decision in a letter dated November 22, 1995, which was received by the Office on November 28, 1995.

By decision dated December 20, 1995, the Office denied appellant's application for review on the grounds that it neither raised substantial legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not established that he sustained an additional hearing loss causally related to his federal employment.

In the present case, appellant received a schedule award for an 11 percent monaural hearing loss in his left ear causally related to noise exposure in his federal employment based on the results of an audiogram administered on July 14, 1988. Appellant has now claimed that he is entitled to a schedule award for additional hearing loss. It is appellant's burden to establish the

¹ 5 U.S.C. § 8101 *et seq.*

essential elements of his claim, including that the claimed additional hearing loss is causally related to his federal employment.²

In its November 7, 1995 decision, the Office accepted that appellant experienced a hearing loss caused by employment factors, but determined, based on the medical evidence of record, that appellant failed to establish that he experienced any additional hearing loss causally related to employment factors.

In his September 29, 1995 report, Dr. Johnson reviewed audiometric testing performed on his behalf, reviewed appellant's medical and audiological records, and noted findings on examination. Based on these findings, Dr. Johnson concluded that appellant had not suffered any additional hearing loss causally related to noise in his employment since the July 14, 1988 audiogram. The Office medical adviser concurred with the Dr. Johnson's conclusion and determined that appellant did not have a ratable hearing loss related to his employment.

The Board finds that the weight of medical opinion establishes that appellant did not sustain further hearing loss since the previous award of compensation, given that appellant was removed from a noisy workplace environment in December 20, 1987 and had not been exposed to noise of sufficient intensity and duration since that time to produce a noise-induced hearing loss. To the extent that appellant is claiming that he suffered additional hearing loss causally related to noise exposure in federal employment subsequent to December 20, 1987, there is no supporting medical evidence of record. Appellant has not established an additional hearing loss causally related to his federal employment and the Office properly denied his claim.

The Board holds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

² *Henry Ross, Jr.*, 39 ECAB 373, 377 (1988). To establish an injury in the performance of duty in an occupational illness claim, a claimant must submit a rationalized medical opinion, based on a complete background, supporting causal relationship between the claimed condition and specific employment factors. *Lucretia M. Nielsen*, 42 ECAB 583 (1991).

³ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

In the present case, appellant failed to show in his November 22, 1995 letter that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; nor did he advance a point of law not previously considered by the Office. Neither has he submitted relevant and pertinent evidence not previously considered by the Office. Further, appellant submitted no new and relevant medical evidence with the November 22, 1995 reconsideration request. Although appellant generally contended that he had suffered additional hearing loss causally related to his employment since the time he previously received a schedule award for hearing loss from the Office, the issue in this case is medical in nature and must be addressed by a physician. Appellant failed to submit medical evidence in support of this contention. Therefore, the Office properly refused to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated December 20 and November 7, 1995 are therefore affirmed.

Dated, Washington, D.C.
April 28, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member