

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STUART M. COLE and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Richlands, Va.

*Docket No. 96-962; Submitted on the Record;
Issued February 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a ratable hearing loss causally related to noise exposure in his federal employment.

This is the third appeal in the case. In the first appeal the Board found that the conflict in the medical evidence as to whether appellant had a ratable hearing loss had not been properly resolved, and the case was remanded for further development.¹ In the second appeal, the Board again remanded the case, finding that the Office of Workers' Compensation Programs had failed to explain why the August 11, 1993 audiogram performed for Dr. R. Austin Wallace, a Board-certified otolaryngologist selected as an impartial medical specialist, failed to establish a ratable hearing loss.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

In a decision dated January 2, 1996, the Office determined that appellant did not have a ratable hearing loss.

The Board has reviewed the record and finds that the case is not in posture for decision.

Following the Board's second remand, the Office attempted to further develop the record by referring appellant for examination by Dr. Lois R. March, a Board-certified otolaryngologist. As the prior Board decisions indicate, however, there is a conflict in the medical evidence under 5 U.S.C. § 8123(a) which must be resolved. To resolve a conflict in the medical evidence, the Office must refer appellant to an impartial medical specialist selected according to established

¹ Docket No. 92-933 (issued January 21, 1993).

² Docket No. 94-729 (issued September 15, 1995).

Office procedures, which includes selection of a physician according to a strict rotational system.³

In this case there is no indication that Dr. March was selected as an impartial medical specialist. The referral letters indicate that the examination was made as a second opinion evaluation, not as an impartial medical examination to resolve a conflict. As a second opinion physician, Dr. March cannot resolve a conflict in the medical evidence.

Accordingly, the case will again be remanded for the Office to properly resolve the conflict in the medical evidence. The Office should refer appellant for examination and audiological evaluation by a physician properly selected as an impartial medical specialist. The specialist should provide a reasoned opinion as to whether appellant has a hearing loss causally related to his federal employment, and if so, an Office medical adviser should calculate the percentage on a Form CA-51 in accord with Office procedures. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated January 2, 1996 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 23, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ See *Vernon E. Gaskins*, 39 ECAB 746 (1988); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4 (March 1994).