

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE A. ALEXANDER and DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 96-1189; Submitted on the Record;
Issued March 26, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he had a hearing loss causally related to exposure to noise at work.

On July 27, 1994 appellant, then a 52-year-old electrical equipment inspector, filed a claim alleging that he sustained a hearing loss as a result of noise exposure in his federal employment. The employing establishment submitted documents indicating that appellant had hazardous noise exposure in several positions with the employing establishment beginning in 1976. Appellant's supervisor estimated that appellant was exposed to an average of noise levels of 95 decibels for about 2 hours per day. The employing establishment also submitted various audiograms taken from 1976 to 1994.

In a September 26, 1994 report, Lt. S.C. Robinson, an employing establishment audiologist, stated that the initial test results in 1976 showed a preexisting bilateral hearing loss. He noted that the baseline audiogram in 1981 showed some decrease in high frequency hearing levels in the right ear and that test results from 1982 to 1992 showed fluctuations in hearing levels bilaterally. Lt. Robinson further noted that a full audiological evaluation in November 1993 showed a nonoccupationally-related bilateral conductive hearing loss. Lt. Robinson further noted that the 1993 audiological evaluation contained a notation that appellant had experienced head trauma involving an incident prior to his civil service employment in approximately 1970 or 1971.

On December 5, 1994, an Office of Workers' Compensation Programs medical adviser opined that there was evidence of a noise-induced hearing loss and factors of federal employment were competent to contribute to appellant's hearing loss and recommended that appellant have a comprehensive hearing evaluation by a certified otolaryngologist.

In a February 21, 1995 report, received March 13, 1995 from Dr. G.W. Bates, a Board-certified otolaryngologist, who examined appellant and opined that "it is impossible to state from

the examination and the reviews of these hearing tests whether the nerve component (that is, the sensorineural component) or his hearing loss is in any way related to acoustic trauma or whether it is a component of the otosclerosis which is the apparent diagnosis in his case.” Dr. Bates further explained that it was impossible to tell whether acoustic trauma had a significant place in the etiology of appellant’s nerve type hearing loss or whether it was due entirely to the otosclerotic process.

The Office prepared a statement of accepted facts and referred it, together with the case record, to Dr. A. Lawrence Lemel, a Board-certified otolaryngologist, for his review and comment. He examined and evaluated appellant on March 22, 1995. Dr. Lemel reported findings and diagnosed otosclerosis with bilateral conductive hearing loss. He opined that the sensorineural hearing loss seen was not due, in part or all, to noise exposure in appellant’s federal employment. Dr. Lemel also indicated that workplace noise exposure was not sufficient to cause the hearing loss. A February 16, 1995 audiogram, taken on Dr. Lemel’s behalf, accompanied his report.

In a March 22, 1995 report, an Office medical adviser reviewed Dr. Lemel’s report and concurred with his results, considering them to be “valid.”

By decision dated March 24, 1995, the Office denied appellant’s claim, finding that appellant’s hearing loss was not causally related to noise exposure in his federal employment but was due to otosclerosis.

Appellant requested reconsideration on May 31, 1995, resubmitting Dr. Bates February 21, 1995 report.

In a February 8, 1996 decision, the Office denied appellant’s request for reconsideration without a merit review, finding that no substantive legal questions were raised and that appellant failed to submit new and relevant evidence.

The Board has duly reviewed the case on appeal and finds that appellant failed to establish that he sustained a loss of hearing due to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that he is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time-limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

presence or existence of the disease or condition for which compensation is claimed,³ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

In the instant case, appellant has established that he is an employee of the United States, that that his claim was timely filed, and that exposure to hazardous noise occurred in the performance of duty. However, he has not established that the claimed condition or disability is causally related to the injury as alleged.

The report of Dr. Lemel, the Board-certified otolaryngologist to whom the Office referred appellant, negates workplace noise exposure as a cause of appellant's hearing loss. Dr. Lemel reviewed relevant records, examined appellant, had an audiogram performed, and diagnosed otosclerosis with bilateral conductive hearing loss. He opined that the loss of hearing appellant was experiencing is not due to noise exposure but is due to otosclerosis. An Office medical adviser concurred in Dr. Lemel's assessment. Although Dr. Bates mentioned in his report of February 21, 1995 that a sensorineural or nerve hearing loss can be produced by acoustic trauma or by otosclerosis, Dr. Bates opined that "[t]here is no way to tell whether acoustic trauma ha[d] a significant place in the etiology of [appellant's] nerve type hearing loss of whether this is due entirely to the otosclerotic process." As Dr. Bates offered an equivocal opinion on causation, his report is of diminished probative value and is insufficient to support appellant's claim that his hearing loss is causally related to his federal employment.⁹

³ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁵ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *James Mack*, 43 ECAB 321 (1991).

Furthermore, the Office medical adviser's December 5, 1994 report is not sufficient to establish the claim. While the Office medical adviser opined that workplace noise exposure was competent to cause appellant's hearing loss, he recommended that appellant be further evaluated by an appropriate specialist. This was achieved when appellant was examined by Dr. Lemel. As noted above, Dr. Lemel provided no basis on which to attribute any portion of appellant's hearing loss to his employment.

The decisions of the Office of Workers' Compensation Programs dated March 24, 1995 and February 8, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 26, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member