

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREDERICK S. SKINNER and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 97-902; Submitted on the Record;  
Issued November 5, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a ratable loss of hearing in the performance of duty, causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds it not in posture for decision.

On March 10, 1996 appellant, then a 40-year-old pipefitter, filed a claim alleging that he sustained a loss of hearing due to noise exposure at the employing establishment. The Office of Workers' Compensation Programs accepted that during his federal employment appellant was exposed to noises generated by grinders, blowers, high pressure air, operation of forklifts, pneumatic tools, deck crawlers and sandblasters. The Office further accepted that, although the exact amount of exposure to noise at injurious levels could not be determined, the potential existed for appellant to be exposed to an average noise level of 93.33 decibels for at least 5 hours a day, 5 days a week.

A preemployment audiogram dated September 7, 1978 revealed that appellant had a preexisting slight low to mid frequency hearing loss of which he was advised. Routine annual audiometry performed on appellant on July 11, 1995 at the employing establishment occupational health clinic demonstrated that appellant had a progressive low to mid frequency loss of hearing, although not typical of noise-induced loss.

The employing establishment controverted appellant's claim, asserting that appellant had a preexisting hearing loss, and that he had suffered no significant threshold shifts during his 17 years of employment with the federal government under the hearing conservation program.

On June 27, 1996 the Office referred appellant, together with a statement of accepted facts, to Dr. Robert Marwick, a Board-certified otolaryngologist, for examination and evaluation. He performed a complete audiometric examination and testing. In his July 25, 1996 report, Dr. Marwick noted that the tests revealed asymmetrical and low frequency sensorineural hearing loss suspicious and suggestive of either Meniere's disease and/or an acoustic neuroma, and stated that an "ABR" examination had been recommended and scheduled. He entered a final

diagnosis of mild to moderate bilateral sensorineural hearing loss not due to noise exposure in appellant's federal employment. Dr. Marwick explained that the pulse tone configuration revealed on testing was not consistent with noise-induced hearing loss, as the asymmetrical configuration coupled with the low to mid frequency range hearing loss was not typical of long-term noise exposure.

The Office forwarded Dr. Marwick's report to an Office medical adviser for his review and comment. In his report dated August 18, 1996, the Office medical adviser noted that Dr. Marwick had scheduled an "ABR" test and recommended that the Office obtain the results of the test and then ask Dr. Marwick whether the results changed his mind regarding the cause of appellant's hearing loss.

By decision dated December 2, 1996, the Office rejected appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's hearing loss was related to his employment.

The Board finds that the medical evidence requires further development. Although Dr. Marwick stated that appellant's hearing loss was not caused by noise exposure in his federal employment, and provided medical rationale for his opinion, the Office medical adviser recommended that the results of additional testing be obtained and reviewed prior to issuing a final decision. While appellant has the burden of establishing entitlement to compensation, proceedings under the Act are not adversarial, and when the Office has undertaken the development of either factual or medical evidence, the Office has an obligation to see that justice is done.<sup>1</sup>

The decision of the Office of Workers' Compensation Programs dated December 2, 1996 is hereby set aside and the case is remanded for further development in accordance with this decision and order.

Dated, Washington, D.C.  
November 5, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>1</sup> 20 C.F.R. § 10.110(b); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).