

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN J. KUBOVSAK and DEPARTMENT OF THE NAVY,  
MARINE CORPS LOGISTICS BASE, Barstow, Calif.

*Docket No. 97-524; Submitted on the Record;  
Issued October 19, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On April 13, 1990 appellant, then a 31-year-old air conditioning mechanic, filed a claim alleging that he sustained gradual loss of hearing due to hazardous noise exposure in the course of his federal employment. Appellant had begun working at the employing establishment eight months earlier on August 7, 1989, but stated that his loss of hearing had progressed over the past years dating back to his military service ending in 1983. He had been in federal employment since January 1985. In support of his claim, appellant submitted multiple audiograms obtained as a result of annual monitoring in the employing establishment's hearing conservation program. Appellant's baseline audiogram obtained April 13, 1990 was noted as demonstrating a mild/moderate low frequency loss of hearing not suggestive of noise-induced hearing loss. No noise survey data from the employing establishment was initially submitted, but the Office of Workers' Compensation Programs accepted that appellant was exposed to hazardous noise while in federal service. Thereafter, personal noise dosimetry readings revealed that appellant was periodically exposed to noise in excess of 100 decibels but that the time-weighted average of decibel exposure was not in excess of Occupational Safety and Health Administration permissible exposure levels.

On July 19, 1995 the Office referred appellant to Dr. Donald L. Baltz, a Board-certified otolaryngologist, for evaluation of his hearing loss. By report dated November 11, 1995, Dr. Baltz reviewed appellant's history, conducted an examination, evaluated his audiometric results and concluded that appellant had a right ear sensorineural hearing loss and a left ear mixed conductive hearing loss which could represent otosclerosis.

By letter dated December 13, 1995, the Office requested clarification from Dr. Baltz as to the employment relatedness of appellant's hearing loss.

In a response dated January 12, 1996, Dr. Baltz stated that there appeared to be a mixture of some nerve component damage, which was secondary to noise exposure, but that there was also a mixed conductive hearing loss, particularly of the left ear, which was indicative of potential physiologic otosclerosis. Dr. Baltz estimated an 80 percent physiologic hearing loss and a 20 percent noise-induced hearing loss.

Thereafter, the Office referred appellant's record to an Office medical adviser, Dr. Brian E. Schindler, a Board-certified otolaryngologist, for an opinion on Dr. Baltz's diagnoses and estimates.

By report dated March 12, 1996, Dr. Schindler noted that appellant's hearing losses were low frequency and had a conductive component and he recommended that appellant get a second opinion. Dr. Schindler stated that he was in disagreement with Dr. Baltz because appellant did not demonstrate the high frequency hearing loss that would be expected in noise-induced hearing loss.

On April 23, 1996 the Office referred appellant to Dr. Geoffrey A. Smith, a Board-certified otolaryngologist, for a second opinion examination and evaluation, with specific questions to be resolved. By report dated May 24, 1996, Dr. Smith reviewed appellant's history, conducted an examination, reviewed the medical data of record and the audiometrics and diagnosed bilateral congenital hearing loss, worse on the left. Dr. Smith opined that appellant's hearing loss did not appear to have any industrial causation, because the high frequency hearing loss one would expect from noise-induced trauma was absent from all of appellant's audiograms and the hearing loss that the audiograms revealed was strictly a low frequency loss, which was the pattern seen with congenital hearing loss. Dr. Smith opined that there did not appear to be otosclerosis, but possibly there was cochlearotosclerosis, however, with appellant's hearing loss pattern, the loss was congenital with the pathology usually in the membranous portions of the cochlea rather than a bony deformity. Dr. Smith reiterated that appellant did not have the audiogram of noise trauma etiology but of nonindustrial, congenial etiology and hence had no industrially caused hearing loss. He opined that congenial neurosensory loss was the correct diagnosis.

By decision dated September 19, 1996, the Office rejected appellant's claim for occupational hearing loss finding that the medical evidence of record did not support that appellant's hearing loss was related to hazardous noise exposure during his federal employment. The Office found that Dr. Smith's well-rationalized medical opinion constituted the weight of the medical opinion evidence and that the opinion of Dr. Baltz was of diminished probative value as he did not explain how appellant could have any part of his hearing loss be employment-related, without having the audiometric evidence of high frequency hearing loss to support that opinion.

The Board finds that appellant has failed to establish that he sustained noise-induced hearing loss in the performance of duty, causally related to factors of his federal employment.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based

upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.<sup>1</sup> Causal relationship is a medical issue that can be established only by medical evidence.<sup>2</sup> The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.<sup>3</sup> In this case, appellant has not met his burden of proof to establish that his hearing loss is causally related to factors of his federal employment.

Appellant has not submitted any rationalized medical evidence that supports his contention that his hearing loss is causally related to noise exposure in the course of his federal employment.

In fact, the only medical evidence of record that even mentions a relationship with employment is the opinion of Dr. Baltz, which did not contain any rationale explaining why, if he believed appellant's hearing loss was 20 percent occupationally related, appellant's audiogram did not demonstrate such a high frequency hearing loss as would be expected with noise trauma. This lack of rationale diminishes the probative value of Dr. Baltz's opinion and renders it insufficient to support appellant's claim

The Board notes, however, that the report of Dr. Smith is rationalized and constitutes the weight of the medical opinion evidence in establishing that appellant did not have employment-related noise-induced hearing loss. Dr. Smith fully and completely evaluated appellant and noted that the consistently demonstrated audiometric pattern of his low frequency hearing loss was not characteristic of noise-induced hearing loss but, instead, was consistent with a conductive hearing loss such as that, which would be seen with a congenital pathology. Dr. Smith noted the audiometric absence of high frequency hearing loss, which would be associated with traumatic noise-induced damage to the hair cells within the cochlear apparatus, or sensorineural hearing loss.<sup>4</sup> Dr. Smith also explained that with appellant's consistent audiometric testing results he did not demonstrate evidence of noise-induced loss of hearing but instead demonstrated hearing loss at lower frequencies due to some other defect, probably congenital.

As Dr. Smith's well-rationalized report constitutes the weight of the medical opinion evidence, appellant has failed to meet his burden of proof to establish his claim.

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<sup>1</sup> *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

<sup>2</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>3</sup> *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

<sup>4</sup> *Id.* pp 171-261.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 19, 1996 is hereby affirmed.

Dated, Washington, D.C.  
October 19, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member