

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENRIQUE R. FLORES and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Corpus Christi, TX

*Docket No. 98-1596; Submitted on the Record;
Issued December 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss in the performance of duty.

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 an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are 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 presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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.³

In the present case, the Office of Workers' Compensation Programs found that appellant did not submit sufficient medical evidence to establish that he sustained a hearing loss due to employment factors. Appellant submitted the results of audiograms conducted from 1976 through 1996. Appellant's 1996 audiogram indicated some low frequency hearing losses and

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Jerry D. Osterman*, 46 ECAB 500 (1995).

slight losses at 500 decibels. Nevertheless, all of this audiogram evidence is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on the cause of appellant's claimed hearing loss.⁴ The record, however, does contain a medical report which indicates that appellant's claimed hearing loss was not related to employment factors. In a report dated October 7, 1997, Dr. Antonio C. Andrade, an otolaryngologist, to whom the Board referred appellant for otologic and audiologic evaluation, reviewed an audiogram dated October 7, 1997 and found that appellant demonstrated only a low tone sensorineural hearing loss. Dr. Andrade further noted a retraction of the tympanic membranes in both ears. Consequently, Dr. Andrade concluded that appellant did not have a noise-induced hearing loss. On March 29, 1998 an Office medical adviser reviewed Dr. Andrade's report and agreed that there was no evidence to support a noise-induced hearing loss causally related to appellant's federal employment. Appellant, therefore, has not met his burden to establish that he sustained a hearing loss causally related to his federal employment.

For these reasons, the Office properly denied appellant's claim that he sustained a hearing loss in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated April 2, 1998 is affirmed.⁵

Dated, Washington, D.C.
December 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁴ *Arlonia B. Taylor*, 44 ECAB 591 (1993) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁵ The Board notes that subsequent to the Office's April 2, 1998 decision appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).