

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARVIN L. BOUSTEAD and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 98-1764; Submitted on the Record;
Issued December 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that his hearing loss is causally related to his federal employment.

On April 8, 1991 appellant, then a 57-year-old retired motor vehicle operator,¹ filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his hearing loss was due to factors of his federal employment. In response to a request from the Office of Workers' Compensation Programs for additional information regarding his claim, appellant indicated that, in his federal employment, he was exposed to excessive noise from forklifts, diesel buses, tractor trailers, various trucks and other equipment. He also noted that ear plugs were provided with his federal employment job. The employing establishment confirmed that appellant had been exposed to such equipment since 1955 when he began work as a laborer.

By letter dated October 17, 1991, the Office referred appellant, along with a statement of accepted facts, to Dr. William T. Ritchie, a Board-certified otolaryngologist, for an audiometric and otologic evaluation to determine whether appellant had a hearing loss and if he did, whether the hearing loss was caused or aggravated by his federal employment.

In a report dated November 13, 1991, Dr. Ritchie opined that appellant had a combined binaural hearing loss of 48.4 percent which was most probably not related to his federal employment noise exposure. Dr. Ritchie further noted:

“Although the type and configuration of the hearing loss could be compatible with acoustic trauma, [appellant's] hearing loss predated his employment at the shipyards. On a more probable than not basis, the hearing loss is not secondary to noise exposure during his employment. The apparent decrease in the hearing sensitivity demonstrated on his occupational hearing tests between the early parts

¹ Appellant retired from the employing establishment on November 30, 1990.

of his employment and the latter years is probably secondary to change in standardization of the tests.”

By decision dated November 12, 1996, the Office denied appellant’s claim. In the attached memorandum, the Office found, based upon Dr. Ritchie’s opinion, that appellant’s hearing loss was not caused or aggravated by his federal employment.

By letter dated January 14, 1997, postmarked January 15, 1997, appellant requested either a written or oral hearing before an Office hearing representative.

By letter dated January 15, 1997, appellant also requested reconsideration of the Office’s decision denying his claim for a hearing loss.

By letter decision dated February 25, 1997, the Office denied appellant’s request for hearing as his request, which was postmarked January 15, 1997, had not been made within 30 days of the November 12, 1996 decision.

On April 3, 1997 the Office, based upon a merit review, determined that appellant had submitted insufficient evidence to warrant modification of the November 12, 1996 Office decision. The Office determined that contrary to appellant’s argument that the Office had not accepted his claim for a binaural hearing loss merely because it was noted upon an Office Form CA-800² and that the file reflected that appellant was referred to a specialist to make a determination as to the relationship between his federal employment and the degree of impairment, if any.

The Board finds that appellant has not established that his hearing loss is causally related to his federal employment.

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 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 The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.⁴ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant

² The fatal injury summary notes under number 22 in parenthesis (binaural hearing loss 288.12B with the examiner’s initials and date).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁵

In the instant case, the Office referred appellant to Dr. Ritchie to determine whether appellant had a hearing loss and if he did, whether the hearing loss was caused or aggravated by his federal employment as well as the degree of any impairment. Dr. Ritchie found that appellant had a hearing loss, but that it was not caused or aggravated by his federal employment. Dr. Ritchie explained that appellant's hearing loss preexisted his federal employment and that any decrease seen in hearing sensitivity was due to changes in the standardization of the hearing tests. The Office properly found that appellant's hearing loss was unrelated to his federal employment and denied his claim.

On appeal appellant argues that the Office had accepted that he had a hearing impairment based upon the Federal Employees' Compensation Act's nonfatal summary (Form CA-800) and that the Office erred in relying upon outdated medical evidence in reaching its decision. Contrary to appellant's argument the Office did not accept that appellant had a hearing loss due to his federal employment. A review of the record indicates that no acceptance letter was issued to appellant. Furthermore, appellant was referred to Dr. Ritchie to make a determination as to whether appellant had a hearing loss and if there was a hearing loss, the degree of the impairment and whether his federal employment caused or aggravated the hearing loss. Appellant's argument that the Office erred in relying upon Dr. Ritchie's November 13, 1991 report, due to it being more than four years old at the time of the Office's decision as appellant retired in November 1990 and, therefore, was not exposed to any further employment-related noise exposure, is without merit. Thus, the lapse in time between the date of Dr. Ritchie's November 13, 1991 report and the Office's November 12, 1996 decision is not prejudicial to appellant as he did not submit any medical evidence during the interim to establish that his hearing loss was employment related.

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

The decision of the Office of Workers' Compensation Programs dated April 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member