

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA M. BRIANO and DEPARTMENT OF THE TREASURY,
BUREAU OF THE MINT, Denver, Colo.

*Docket No. 97-1776; Submitted on the Record;
Issued July 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to reimbursement for the costs of medical expenses in obtaining hearing aids due to her accepted employment-related hearing loss.

Appellant, a 63-year-old labor leader, filed a Form CA-2 claim for benefits based on occupational disease, alleging that she sustained a hearing loss causally related to factors of her federal employment. Appellant stated that she first became aware she had sustained a hearing loss on June 5, 1995.

Appellant submitted a June 19, 1995 report from Sandra J. Winthrop, a clinical audiologist, who stated that appellant's hearing and understanding with distance had proven to be difficult for her, and that pure tone test results indicated borderline normal hearing to a mild sensorineural hearing loss, with the left ear poorer. Ms. Winthrop stated that she recommended that appellant consider amplification to help her with those situations where she experienced difficulty hearing, but stated that, "unfortunately, they may not be of benefit during working hours."

By letters dated May 24, 1996, the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Paul Dragul, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the June 5, 1996 audiogram for Dr. Dragul noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 15, 20, 20 and 10 decibels: left ear -- 20, 25, 25 and 15 decibels.

In a June 14, 1996 medical report, Dr. Dragul stated that the results of appellant's audiometric test revealed borderline normal hearing bilaterally. Dr. Dragul stated that speech discrimination, when tested at a comfortable loudness level, was 100 percent on both the right

and the left. Dr. Dragul found that based on the prevailing Department of Labor standards, this hearing loss would amount to zero percent on the right, zero percent on the left, with a binaural hearing loss percentage of zero percent. Dr. Dragul recommended stringent use of ear protection when around any high intensity noise and that appellant should recheck her hearing in one year to monitor any potential change.

On July 2, 1996 an Office medical adviser concurred with Dr. Dragul that appellant did not have a ratable hearing loss causally related to her employment. Hearing aids were not recommended.

In a decision dated July 5, 1996, the Office accepted appellant's claim for hearing loss due to her employment-related noise exposure, but found that her hearing loss was not severe enough to be considered ratable. The Office further found that the weight of the medical evidence established that she would not benefit from hearing aids and that her claim for additional medical benefits was also denied.

In a letter dated September 12, 1996, appellant requested reconsideration of the Office's previous decision. Appellant stated that she wanted to purchase hearing aids and contended that the Office should reimburse her for the cost of the hearing aids. Accompanying her request was an August 28, 1996 report from Dr. Erik W. Kreutzer, a Board-certified otolaryngologist, who stated that appellant presented with chronic hearing loss which had worsened and noted that the results of an audiogram had indicated a moderate neurosensory hearing loss. Dr. Kreutzer recommended a hearing aid evaluation for appellant and submitted a form letter which stated, "[t]he use of a properly fitted hearing aid may significantly improve your communication abilities. To determine your candidacy, a *Hearing Aid Evaluation* needs to be done."

On January 22, 1997 an Office medical adviser reviewed Dr. Kreutzer's audiological testing report and stated that he was unable to determine whether appellant's hearing loss had increased and whether appellant should therefore be fitted for a hearing aid. The Office medical adviser stated that most of the standards required for adjudication of this type of claim, *i.e.*, a 12-hour statement, calibration, bone conduction, etc., were absent. The Office medical adviser advised that until these issues were addressed, he could not make a determination regarding hearing aids.

By decision dated January 27, 1997, the Office denied modification of its previous decision. The Office stated that the information appellant submitted in support of her claim for hearing aids was absent in all of the criteria necessary to adjudicate a hearing loss claim.

The Board finds that appellant is not entitled to reimbursement for the costs of medical expenses in obtaining hearing aids due to her accepted employment-related hearing loss.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim

¹ 5 U.S.C. § 8101, *et seq.*

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In its January 27, 1997 decision, the Office found that the information appellant submitted in support of her claim for hearing aids was absent in all of the criteria necessary to adjudicate a hearing loss claim. On appeal, appellant has only requested reimbursement for her costs in being fitted for hearing aids. Section 8103 of the Act⁴ requires that the Office provide all medical care necessary on account of an employment injury and that this care shall be furnished by or on the order of physicians designated or approved by the Office.⁵ The Federal (FECA) Procedural Manual, Part III, *Medical, Supplies and Appliances*, Chapter 3.400.3d.2 (October 1995), states, “Hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the authorized physician so recommends.”

The record before the Board establishes that appellant is not entitled to compensation for her medical expenses in obtaining hearing aids. The Office, in its July 5, 1996 decision, accepted appellant’s claim for hearing loss due to her employment-related noise exposure notwithstanding the fact that it found appellant had not sustained a hearing loss sufficiently severe to be considered ratable. Subsequently, appellant requested reconsideration and hearing aids based on Dr. Kreutzer’s August 28, 1996 report, in which he stated that appellant had chronic hearing loss which had worsened, diagnosed a moderate neurosensory hearing loss, and submitted a form letter which generally advised that she could benefit from having hearing aids, and recommended that she undergo a hearing aid evaluation. Dr. Kreutzer, however, did not specifically recommend hearing aids for appellant. More importantly, as the Office medical adviser correctly pointed out, Dr. Kreutzer failed to provide properly conducted audiograms to support his finding of an increased hearing loss. Further, Dr. Kreutzer did not explain the process through which the increased hearing loss was causally related to factors of appellant’s federal employment. Thus, the medical evidence appellant submitted is not sufficient to establish that she was entitled to reimbursement for the costs of medical expenses in obtaining hearing aids due to her accepted employment-related hearing loss. The Board therefore affirms the Office’s January 27, 1997 decision denying modification of its July 5, 1996 decision.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁴ 5 U.S.C. § 8103.

⁵ *Louis V. Romero*, 42 ECAB 146 (1990); *Linda Holbrook*, 38 ECAB 229 (1986); *Zane H. Cassell*, 32 ECAB 1537 (1981).

The decision of the Office of Workers' Compensation Programs dated January 27, 1997 is affirmed.

Dated, Washington, D.C.
July 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member