

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE R. DUROCHER and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 97-2661; Submitted on the Record;
Issued July 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant's hearing loss is causally related to exposure to noise at work.

The Board has carefully reviewed the record of evidence and finds that appellant has failed to meet his burden of proof in establishing a causal relationship between his hearing loss and work factors.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition, for which compensation is claimed is causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In an occupational disease claim such as a hearing loss, claimant must submit (1) medical evidence establishing the 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 disease, and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.³

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Judith A. Peot*, 46 ECAB 1036, 1041 (1995).

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁴ Neither the fact that appellant's hearing loss became apparent during a period of employment nor appellant's belief that his condition was caused or aggravated by his employment is sufficient to establish a causal relation.⁵

In this case, appellant filed a notice of occupational disease on November 19, 1992 claiming a hearing loss after the employing establishment informed him of a change in hearing sensitivity. The Office of Workers' Compensation Programs referred appellant to Dr. Siew S. Tso, a Board-certified otolaryngologist, for a second opinion evaluation. Based on his May 12, 1993 report, the Office denied appellant's claim on June 24, 1993.

Subsequently, appellant, a motor vehicle operator since 1980, was separated from the employing establishment and filed a second hearing loss claim on January 30, 1997. The Office referred him back to Dr. Tso for testing.

In his June 10, 1997 report, Dr. Tso related that appellant had experienced progressive hearing loss since his last examination in 1993 and now had a mild-to-moderate bilateral high frequency loss. Dr. Tso stated the hearing loss was not related to noise exposure.

On July 16, 1997 the Office denied appellant's claim on the grounds that he had failed to establish that his hearing loss was caused by work factors.

The Board finds that the medical evidence is insufficient to establish that appellant's hearing loss was work related.

Audiologic testing on April 27, 1993 revealed a mild bilateral high frequency sensorineural loss, with relatively normal hearing in the lower ranges. The test results showed excellent discriminatory ability and a very mild loss, generally not noticeable to a person.

In his May 12, 1993 report, Dr. Tso concluded that appellant's high frequency loss was likely related to age and not caused by noise exposure. He explained that appellant was subjected to hazardous noise levels in his first year at the employing establishment, starting in 1979, but was then transferred to less noisy jobs. Appellant's regular hearing tests over 14 years showed a "very slight deterioration," which was "not incompatible with the aging process."

Four years later, Dr. Tso noted further deterioration, ranging between 10 and 20 decibels (dBAs) and involving the mid and high frequencies in both ears. Noting that the statement of accepted facts indicated that as a motor vehicle operator appellant had not been exposed to noise

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *see Jerry D. Osterman*, 46 ECAB 500, 508 (1995).

above 84 dBAs on a regular basis since 1980,⁶ he stated that without loud noise exposure and assuming that appellant wore ear protection while operating equipment, it was unlikely that his progressive hearing deterioration was noise induced.

Dr. Tso added that with appellant's strong family history—his mother and several sibling have hearing losses that require the use of aids—a major component of his hearing loss was hereditary, compounding the loss due to aging. Thus, the medical evidence is insufficient to establish a causal relationship between appellant's hearing loss and work factors. Therefore, the Board finds that the Office properly denied his claim.⁷

The July 16, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

⁶ Appellant indicated on appeal that at no time during his employment was any testing of his equipment done and asked who measured the 84 dBA level and how. The record indicates that such testing at the employing establishment had been done since 1959 and that typical noise levels for a motor vehicle operator were 62 to 73 dBAs.

⁷ See *Joseph T. Gulla*, 36 ECAB 516, 519 (1985) (finding that the weight of the medical evidence established that appellant's hearing loss was not work related).