

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD M. LUNDGREN and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, DC

*Docket No. 98-626; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On February 10, 1997 appellant, then a 54-year-old former employee, filed a claim alleging hearing loss as a result of federal employment.¹

On June 2, 1997 the Office of Workers' Compensation Programs referred appellant to Dr. Frank C. Hill, Board-certified in otolaryngology, for an audiologic and otologic evaluation. In a report dated July 3, 1997, he stated that he had examined appellant and determined that he had mild high frequency neurosensory hearing loss. In response to a question in an Office form, Dr. Hill replied that appellant's workplace exposure was sufficient in intensity and duration to have caused the hearing loss. However, he also checked a box indicating that appellant's sensorineural hearing loss was not caused by appellant's federal employment. On September 22 and October 23, 1997 the Office requested Dr. Hill to clarify his statements and state whether he believed that appellant's hearing loss was caused by noise exposure while in the performance of duty as a federal employee.

On October 31, 1997 the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant had sustained a work-related hearing loss.

The Board finds that the case is not in posture for decision.

It is well established that proceedings under the Federal Employees' Compensation Act² are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the

¹ Appellant also filed a claim for a schedule award on the same day.

² 5 U.S.C. §§ 8101-8193.

burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence.³ Furthermore, once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible.⁴ In this case, the Office referred appellant to Dr. Hill, who found that appellant had sustained a hearing loss, but made ambiguous comments regarding the exact nature of the causal relationship between appellant's hearing loss and employment. Since Dr. Hill declined the Office's requests for clarification on at least two occasions,⁵ the Office was required to refer appellant to another medical specialist to determine the issue of causation and, if appropriate, to determine the degree to which appellant's hearing loss caused any disability.⁶

On remand, the Office should refer appellant to a Board-certified otolaryngologist or other appropriate specialist for a rationalized medical opinion on the extent of appellant's hearing loss and its relationship to his employment. The Office should also inform the specialist of its evidentiary requirements for hearing loss schedule award evaluations. After such further development as the Office deems necessary, a *de novo* decision should be issued.

The October 31, 1997 decision of the Office of Workers' Compensation Programs is hereby set aside; the case is remanded to the Office for further action in accordance with this decision of the Board.

Dated, Washington, D.C.
July 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ *John J. Carlone*, 41 ECAB 354 (1989); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁴ *Edward Schoening*, 41 ECAB 277 (1989).

⁵ The record also contains an Office telephone memorandum noting that the Office called Dr. Hill's office for a clarification of his report on October 30, 1997.

⁶ *See also James C. Talbert*, 42 ECAB 974 (1991); *Margaret Ann Connor*, 40 ECAB 214 (1988).