U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY A. LINKOVICH and DEPARTMENT OF THE NAVY, AIR SYSTEM COMMAND, Philadelphia, PA

Docket No. 98-551; Submitted on the Record;
Issued November 12, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a loss of hearing causally related to factors of his federal employment.

On January 31, 1996 appellant, then a 50-year-old engineering technician filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a hearing loss causally related to factors of his federal employment. He stated that on April 26, 1990 he was informed of a loss of hearing which was probably due to the jet engine noises he was exposed to as an engineering technician, working around jet engines and being exposed to high noise decibel levels. Appellant also states that the only high noise decibel levels, for which he was exposed to for over the past 10 years, was due to noise levels at the "flight line." He alleges that he first became aware of his loss of hearing on January 11, 1990; first sought medical treatment and realized his loss of hearing was caused or aggravated by his federal employment on April 26, 1990; and that he first reported his condition to his supervisor on December 28, 1995. Appellant also explained that he delayed filing this claim because his loss of hearing had taken place over many years and it was not until December 28, 1995, when he was examined by an audiologist who informed him that he needed hearing aid before he decided to file this claim.

On the reverse side of this form, the employing establishment controverted appellant's claim alleging that appellant held many positions in the private industry employment prior to working for the federal government that has exposed him to high noise levels.[1]

[1] The record shows that appellant held his current position as an engineering technician for the employing establishment since 1985; that appellant's loss of hearing was monitored by the employing establishment's health unit since October 3, 1985; that he was exposed to high noise levels through several private industry jobs which he held prior to his federal employment and worked around noise-induced jet engines from December 1964 through January 1966; October 1971 through November 1973; November 1973 through September 1975; and March 1977 through June 1985.

Appellant submitted in support of his claim various audiograms, various position descriptions, and an undated handwritten note on Form CA-35A, Item 4G, from an employing establishment physician, Dr. Janet L. Gregory, a Board-certified family practitioner. Dr. Gregory noted that appellant has been exposed to jet engine noises for the past 10 years because he was a jet engine test cell instructor. She went on to note that, although appellant has always used hearing protection devices, he still has a bilateral high frequency hearing loss of gradual onset which is currently at the point of requiring a hearing aid. Dr. Gregory then opined that appellant's disability is a direct result of his employment.

On May 1, 1996 the Office of Workers' Compensation Programs referred appellant, the statement of accepted facts, and the case record to Dr. Demetri Antoniou, a Board-certified otolaryngologist, for a second opinion examination and evaluation. By report and audiogram dated May 21, 1996, Dr. Antoniou diagnosed appellant with a sensorineural hearing loss in the mild to moderate range in the high frequencies. He stated:

> "It is my impression that his loss of hearing is probably not attributable to loud noise on the job at the Naval Air Station in Brunswick. The reason for this impression is that he had already had a preexist[e]nt hearing loss already on his initial audiometry as tested on [October 3, 1985]. Furthermore, he has been exposed to loud noise at work during his civilian employment but he has also worn hearing protective devices. His hearing loss has been progressive since 1985 but, this further hearing loss could be attributed on the basis of presbycusis.
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> "Therefore, it is my impression that the patient's underlying hearing loss is probably not work related as the result of his civilian employment at the Naval Air Station in Brunswick since 1985."

By decision dated July 15, 1996, the Office rejected appellant's claim finding that a causal relationship between appellant's loss of hearing with factors of his federal employment had not been established. The Office found that, although appellant held a engineering technician position since 1985, he had been exposed to high noise levels through several private industry jobs which he held prior to his employment with the federal government; that Dr. Antoniou had attributed appellant's additional hearing loss to presbycusis and not to noise exposure at work, and opined that appellant's loss of hearing was not related to factor of his federal employment as an engineering technician.

In a letter dated July 22, 1996, appellant requested a review of the written record before an Office hearing representative. No additional evidence was submitted.

By decision dated June 4, 1997, the Office hearing representative affirmed the Office's July 15, 1996 decision, finding that the medical evidence of file failed to establish a loss of hearing condition causally related to factors of appellant's federal employment.

In a letter dated August 12, 1997, appellant requested reconsideration of the Office hearing representative's June 4, 1997 decision and submitted a duplicate copy of Dr. Gregory's

undated handwritten note on Form CA-35A, Item 4G; a medical report from Dr. Gregory L. Penner, a Board-certified head and neck surgeon, dated July 2, 1997; a medical report from Dr. Peter J. Haughwout, a Board-certified otolaryngologist, dated August 8, 1997; and an Audiology Associates audiogram report performed on behalf of Dr. Penner, by Mr. Martin D. Shofner, an audiologist, on June 16, 1997.

In the July 2, 1997 report, Dr. Penner, a Board-certified head and neck surgeon indicated that appellant had a long history of noise exposure, both in and out of the service. Dr. Penner stated:

> "[Appellant] was employed on the flight line in the Navy in 1966 to 1969 and was exposed to some aircraft engine nose in the Reserves from 1975 to 1977. He was a field service representative from 1977 to 1983 and since 1985 employed in the Navy as a jet engine technician on the flight line. He has worn the recommended ear protection much but not all of the time during his most recent employment. There is no family history of hearing loss at middle or early age and not personal history of head or ear surgery."

Dr. Penner indicated that review of the June 16, 1997 audiogram performed by Audiologist Shofner "revealed mild to moderate sloping sensorineural hearing loss worst at 3,500 to 4,500 hertz with excellent discrimination." He then noted that on examination appellant's ear canals and tympanic membranes revealed that the canals were clear; that the tympanic membranes were mobile and clear with air conduction greater than bone conduction at 512 hertz bilaterally; that the facial structures were symmetrical; and that the anterior minoscopy showed no nasal obstruction, septal deviation or turbinate hypertrohy; that the oral cavity was clear with no pharyngeal cobblestoning or hypopharyngeal mass, with no cervical mass or thyroid enlargement. Dr. Penner opined that appellant's history, examination and available audiogram was suggestive of a mixed noise-induced hearing loss and presbycusis etiology. He then opined:

> "It is certainly going to be difficult to say how much overlay there really is but the audiogram is quite suggestive of a noise-induced loss. The other question is which employment caused the greatest amount of loss and again this is going to be an extremely difficult question. At this point, the best I can say is that this is a mixed loss and there was most certainly some contribution from jet engine noise."

In the August 8, 1997 report, Dr. Haughwout noted the history of exposure as presented by appellant and indicated that he had reviewed documentation of the alleged noise levels to which appellant was exposed both in his federal services in the Navy and his civilian capacity at the Naval Air Station in Brunswick. He indicated that he was in possession of appellant's earliest audiogram dated August 29, 1985 through appellant's most recent examination performed by Audiologist Shofner on June 16, 1997. Dr. Haughwout opined:

> "From the evidence that I have, one would be forced to conclude that appellant indeed has been exposed to potentially injurious noise levels in his employment both as a regular duty Navy personnel and in his civilian capacity at NAS, Brunswick. The question is whether or not he has had sufficient protection from

that injurious noise. His audiograms show a progressive loss in the frequencies 3,000 through 8,000 [hertz] of between 10 through 25 [decibels].

* * *

"I believe that the noise levels to which [appellant] was exposed both in the Navy and as a civilian employee were a direct cause of his present hearing loss. While presbycusis may be a factor, his hearing loss is much more severe than one would anticipate from this cause alone."

By decision dated November 12, 1997, the Office, after reviewing the case on its merits, denied modification of the prior decision.

An employee seeking benefits under the Act[2] 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 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.[3] 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.[4]

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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[5]

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe Cameron*, 42 ECAB 353 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[5] *Id.*

The Board finds that this case is not in posture for decision for a determination on whether appellant sustained an employment-related loss of hearing.

It is not disputed that appellant has a loss of hearing; however, the Office determined that the medical evidence of file failed to demonstrate that appellant's loss of hearing was causally related to factors of his federal employment.

In this case, Dr. Antoniou, an Office referral specialist, attributed appellant's hearing loss to presbycusis and opined that his hearing loss was probably not work related as a result of appellant's civilian employment at the Naval Air Station in Brunswick since 1985. Dr. Penner, appellant's physician, noted a mixed hearing loss in appellant's federal employment, his private employment and presbycusis and stated appellant's mixed loss was contributed to by his federal employment. Dr. Haughwout, appellant's physician, also noted a "mix" of factors which contributed to appellant's hearing loss. Dr. Haughwout opined that appellant was exposed to noise levels in both the Navy and in his civilian employment which was a direct cause of appellant's present hearing loss. In particular, Dr. Haughwout stated that "While presbycusis may be a factor appellant's hearing loss is much more severe than one would anticipate from this cause alone."

The Board finds that the medical evidence of record is in conflict with regard to the causal relationship of appellant's loss of hearing and the contribution to this loss by his exposure to noise in his federal employment. Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physicians of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[6] Accordingly, the case will be remanded to the Office for resolution of the conflict.

On remand the Office should refer appellant, along with a statement of accepted facts and the medical record, to an appropriate specialist for an impartial evaluation and report including a rationalized opinion as to whether appellant's hearing loss condition was causally related to by factors of his federal employment, his private industry employment, to presbycusis, and/or a combination of all three, and if so, the nature and extent of appellant's hearing loss condition.. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement.

[6] 20 U.S.C. § 8123(a).

The November 12 and June 4, 1997 and July 15, 1996 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
November 12, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member