

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEON S. PETERSON and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Ogden, UT

*Docket No. 98-1075; Submitted on the Record;  
Issued October 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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 June 18, 1996 appellant, a 49-year-old production control supervisor, filed a Form CA-2 claim for occupational disease, alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware that his hearing loss was caused or aggravated by his employment on January 8, 1996. Accompanying the claim form was a June 18, 1996 letter from appellant describing his employment history and documentation from the employing establishment which indicated his exposure to loud noise.

The Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Leland P. Johnson, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

Dr. Johnson examined appellant on October 15, 1996, at which time appellant underwent an extensive audiologic and otologic evaluation. He stated that a comparison of a March 1996 audiogram with an audiogram taken on the date of examination demonstrated the development of progressive bilateral, initially mixed and primarily sensorineural hearing loss. Dr. Johnson stated, however, that appellant's workplace noise exposure at the employing establishment was of sufficient intensity, but not of sufficient duration, to produce a noise-induced hearing loss. He noted that appellant had been diagnosed with otosclerosis,<sup>1</sup> which had been documented in

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<sup>1</sup> Dr. Robert Eppens, an audiologist, indicated in a March 5, 1996 report, that otosclerosis was a nonwork-related impairment of the bones [ossicles] of the middle ear.

previous audiograms showing a mixed hearing loss and opined that appellant's hearing loss was not due to noise exposure at the employing establishment. Dr. Johnson concluded:

“This patient's hearing loss is more likely related to the underlying diagnosis of otosclerosis rather than noise-induced hearing loss, based on the history of otosclerosis and surgery in his left ear for otosclerosis and prior audiograms that show a mixed hearing loss. There has been a progression of the hearing loss, primarily in the sensorineural component but this is also more likely related to the underlying diagnosis of otosclerosis.”

Dr. Johnson concluded that appellant had bilateral progressive mixed predominantly sensorineural hearing loss, likely due to otosclerosis.

In a December 2, 1996 report, an Office medical adviser stated that he agreed with Dr. Johnson's rationale that there was no probable work-related hearing loss.

By decision dated December 16, 1996, the Office found that appellant had not sustained an employment-related hearing loss.

By letter dated January 14, 1997, appellant's attorney requested an oral hearing, which was held on August 6, 1997. Subsequent to the hearing, appellant submitted several medical reports in support of his claim, including a September 3, 1997 report from Dr. D. Wilson Hales, a Board-certified otolaryngologist and a September 12, 1997 report from Dr. Brian R. Peterson, a specialist in otolaryngology. Dr. Hales stated in his report that he had been treating appellant since December 1989 and that he had performed surgery on appellant's left ear on January 15, 1990, at which time he confirmed the diagnosis of bilateral otosclerosis. He opined that appellant should avoid noise exposure, which was dangerous to appellant's ears notwithstanding the diagnosis of otosclerosis. Dr. Hales further stated:

“It may be difficult to quantify the relative impact of the otosclerotic process on his hearing loss. Otosclerosis may cause some sensorineural hearing loss over a period of time. But any inner ear loss also makes the inner ear more sensitive to further noise damage. Of the two factors I feel that the more probable reason for the progressive hearing loss is recent, acute noise exposure rather than the slower developing chronic otosclerosis.”

Dr. Peterson, who examined appellant on September 12, 1997, the date of his report, opined that appellant had two types of hearing loss, one from bilateral otosclerosis and the other from sensory neuro hearing loss, which was probably noise-induced hearing loss. He cautioned that it was impossible to make a definitive conclusion since otosclerosis could cause progressive sensory neuro hearing loss. Dr. Peterson stated, however, that given appellant's history of loud noise exposure, together with the pattern of his hearing loss, he believed that appellant's hearing loss was most consistent with noise-induced hearing loss. He asserted that it had been clearly demonstrated that hearing ability which had already been damaged to a small degree by a condition such as otosclerosis could be significantly worsened by noise exposure.

By decision dated October 6, 1997, an Office hearing representative set aside the Office's December 16, 1996 decision. The hearing representative stated that the Office had referred appellant to Dr. Johnson without providing him with a complete medical record and that appellant had subsequently submitted countervailing medical evidence from qualified physicians which indicated that a portion of appellant's hearing loss was work related. The hearing representative instructed the Office to remand the case to the district Office and arrange for Dr. Johnson to submit a supplemental second opinion based on a complete medical record and determine whether appellant's hearing loss was caused in part by employment-related noise exposure. The hearing representative stated that, after any further development that the district Office deemed necessary, it should issue a *de novo* decision.

In a report dated December 5, 1997, Dr. Johnson reviewed the reports from Drs. Hales and Peterson and an audiogram performed on July 14, 1997 and stated that there was no change in his prior opinion that the majority of his hearing loss was most likely due to otosclerosis. Dr. Johnson stated:

“Even though only sensorineural hearing loss in the high frequencies could be caused by noise exposure, in this patient's particular case, he has hearing loss involving all frequencies which is NOT [emphasis in original] consistent with noise exposure or noise[-]induced hearing loss. The patient also has a clear history for otosclerosis both by family history as well as surgical procedure on the left ear on [January 15, 1990] when otosclerosis was confirmed. It is well known that otosclerosis is a familial, bilateral, progressive hearing loss, both conductive and sensorineural. It is felt that the majority of this patient's hearing loss ... is related to the otosclerosis and not to noise exposure. Also, when reviewing this patient's history of noise exposure and dosimetry, he continued to show progression in hearing loss when he was not in a noise hazard area. For these reasons it is felt that the majority of this patient's hearing loss is related to the diagnosis of otosclerosis, not noise-induced hearing loss.”

By decision dated February 6, 1998, the Office denied appellant's claim for benefits, finding, based on Dr. Johnson's opinion, that he had not sustained a hearing loss in the performance of duty.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 the claimant'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 claimant, 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 the claimant.<sup>5</sup>

In the instant case, there is a conflict in the medical evidence, as there were opposing medical opinions regarding the issue of whether appellant sustained a hearing loss in the performance of duty. The Office referral physician, Dr. Johnson, found that appellant's condition was not causally related to his employment. He provided several medical reports in which he explained why he believed appellant's hearing loss was not noise induced. On the other hand, Dr. Hales, a Board-certified otolaryngologist, who opined that the more likely reason for appellant's progressive hearing loss was recent, acute noise exposure, as opposed to chronic otosclerosis. Dr. Peterson also found that appellant's history of loud noise exposure, in conjunction with the pattern of his hearing loss, indicated that his hearing loss was most consistent with a noise-induced hearing loss. Accordingly, a conflict in the medical evidence exists and the case must be referred to an impartial medical examiner to resolve the conflict in medical evidence regarding whether appellant's bilateral hearing loss was causally related to his federal employment.

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated February 6, 1998 is set aside and remanded in accordance with this opinion.

Dated, Washington, D.C.  
October 21, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member