

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALBERT STEWART and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 99-74; Submitted on the Record;  
Issued August 29, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he developed additional binaural loss of hearing in the performance of duty after January 1985, causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a further review of his case on its merits under 5 U.S.C. § 8128(a).

On February 5, 1996 appellant, then a 46-year-old transportation specialist, filed a claim for binaural loss of hearing, which he alleged was sustained in the performance of duty, which he became aware in December 1981 and which he related to his federal employment in September 1988. Appellant indicated that he had previously filed a claim while in maintenance for binaural loss of hearing from 1971 up through January 1985, his last month of hazardous noise exposure. This claim was assigned OWCP No. A16-0114442; the binaural hearing loss was found to be unratable at that time. Appellant claimed that another hearing test he took on February 8, 1995 showed that his hearing had deteriorated.

By report dated July 1, 1996, Captain Tressie L. Waldo, an audiologist, noted as history, that appellant had worked as an aircraft mechanic until 1985, but that since then he had worked in an office setting. Capt. Waldo noted that appellant had received periodic audiometric monitoring while working in a hazardous noise environment, that he suffered some decrease in hearing in 1978, but that his compensation claim of 1986 was denied because his hearing loss was not ratable. She further noted that audiometric testing at that time, February 9, 1986, served as appellant's "termination from hazardous noise duties" audiogram. Capt. Waldo indicated that audiometric testing conducted on May 15, 1996 demonstrated mild to severe high frequency sensorineural hearing loss in the right ear and severe high frequency hearing loss in the left ear. She further noted that speech discrimination was excellent in both ears and that tympanometry was consistent with normal middle ear function bilaterally. Capt. Waldo opined that appellant demonstrated "an asymmetric high frequency sensorineural hearing loss with the left ear being worse than the right. According to the American Medical Association (A.M.A.) *Guides to the*

*Evaluation of Permanent Impairment* this hearing loss equates to a 5.6 percent monaural impairment. However, his 1986 termination audiogram revealed an unratable hearing loss. Any hearing loss occurring since then was not caused or aggravated by occupational exposure to hazardous noise. In addition, a thorough ear exam[ination] by an otolaryngologist to rule out retrocochlear pathology needs is warranted.”

As attachment No. 1, Capt. Waldo provided a table of appellant’s audiometric testing results beginning on October 15, 1971 and continuing through May 15, 1996. The table indicated that on February 9, 1986 appellant’s audiogram demonstrated the following hearing threshold results in decibels: 10, 15, 15 and 40 decibels at 500, 1,000, 2,000 and 3,000 cycles per second (cps) respectively for the right ear and 5, 5, 15 and 65 decibels at 500, 1,000, 2,000 and 3,000 cps respectively for the left ear. Although an audiogram performed on February 8, 1995 demonstrated worsening results, the May 15, 1996 audiogram demonstrated improved results, with the following hearing threshold results in decibels: 15, 10, 15 and 45 decibels at 500, 1,000, 2,000 and 3,000 cps respectively for the right ear and 15, 15, 15 and 70 decibels at 500, 1,000, 2,000 and 3,000 cps respectively for the left ear.<sup>1</sup>

A biological engineering evaluation dated April 2, 1996 was included which indicated that noise survey data from March 1974 indicated that the B-52 Dock was designated as a hazardous noise area and that a December 3, 1981 noise survey also indicated hazardous noise levels occurring at the flightline and around powered ground support equipment and pneumatic equipment. The report also indicated that the C-130 Dock was a hazardous noise area, but no date of survey documentation was given. The report indicated that appellant stated that he worked in the B-52 Dock area during 1974.

By letter dated July 19, 1996, Dr. Donald S. Geeze, an employing establishment Board-certified psychiatrist specializing in aerospace medicine but practicing in occupational medicine services, noted that he had reviewed appellant’s records and opined: “Due to the asymmetry of [appellant’s] hearing loss, an ear, nose and throat evaluation was recommended by Captain Waldo to rule out any retrocochlear pathology. However, this asymmetry has been present since at least 1971, has remained stable and is not an issue in the decision regarding compensation for a hearing loss sustained at work.” Dr. Geeze further stated, “The majority of hearing loss sustained by [appellant] occurred while working in a noise hazardous environment from 1971 [to] 1985.” He noted, “Between 1971 and 1986 his loss increased to 90 decibels AS [auris sinistra] and 80 decibels AD [auris dextra], when measured in 1986. This loss was ‘nonratable’ in that it was less than 100 decibels in either ear.” Dr. Geeze further noted, “His latest audiogram, done 15 May 96, showed a total of 115 decibels AS and 85 decibels AD, equating to a 5.6 monaural impairment AS, according to the A.M.A., *Guides*. Using the same standards, his bilateral hearing loss is 0.9 percent and his whole person impairment is 0 percent.” Dr. Geeze noted, “As the majority of the hearing loss occurred while working in hazardous noise, I recommend approval.”

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<sup>1</sup> The actual audiometric graphing, including calibration date, along with the tympanogram graphing, speech audiometry and accoustic reflex decay test results were provided as attachment three. Bone conduction study results and masked air and bone study results were not provided.

A June 29, 1995 personnel form indicated that the position of transportation specialist was performed in an office or similar setting, involving minimal risk or discomfort and requiring normal safety precautions. A December 22, 1995 notice of personnel action indicated that at that time appellant was working as a transportation specialist. A personal data sheet indicated that appellant began work as a management analyst on January 6, 1985, that prior to that he had been an industrial engineering technician from December 27, 1981 and preceding that he had been an aircraft mechanic from June 23, 1974 and that prior to that he had been an equipment cleaner from April 15, 1973.

The employing establishment submitted a statement noting that appellant now worked in a “nonhazardous/noise section building 1530.” It noted that appellant’s last day of hazardous noise exposure occurred in January 1985.

The Office created a statement of accepted facts and on September 26, 1996 it referred appellant, with the complete case record, to Dr. Gerald P. Laursen, a Board-certified otolaryngologist.<sup>2</sup> Audiometric testing performed at Dr. Laursen’s request on October 17, 1996 revealed the following hearing threshold air conduction results in decibels: 15, 10, 15 and 50 decibels at 500, 1,000, 2,000 and 3,000 cps respectively for the right ear and 15, 15, 20 and 75 decibels at 500, 1,000, 2,000 and 3,000 cps respectively for the left ear. Bone conduction testing results were slightly improved, but the airborne gap was noted to not be significant. Following examination of appellant and audiologic testing, Dr. Laursen noted that appellant had “slight noise damage l[eft] ear,” that his sensorineural loss was in excess of what would be predicted due to presbycusis, that the workplace exposure as described would be sufficient to have caused the loss, but that appellant “served in infantry and fired guns. This would account for slight noise damage in left ear.” Dr. Laursen diagnosed “noise-induced sensorineural hearing loss” due “in part or all” to noise exposure encountered in his federal civilian employment.

An Office medical adviser, Dr. Henry B. Mobley, a Board-certified internist, reviewed the medical evidence of record and noted, “It is generally accepted that noise-induced hearing loss ceases when exposure to excessive noise stops, *i.e.*, there is no progression of hearing loss after the ear is removed from the excessively noisy environment. Any hearing loss that occurs after a claimant is removed from the dangerously high noise level job would not be due to that previous noise exposure. It is my understanding that the claimant was removed from a high decibel exposure job in January 1985 and was placed in a low noise environment. Therefore, any hearing loss after January 1985 would not be job related.”

The Office requested amplification from Dr. Laursen and provided a copy of Dr. Mobley’s opinion to be used as a frame of reference. Dr. Laursen responded, “I agree.”

By decision dated February 21, 1997, the Office denied appellant’s claim finding that the evidence of record failed to establish that appellant developed a ratable hearing loss during the time frame established after January 1985 causally related to factors of his federal employment.

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<sup>2</sup> This statement included the comment that appellant was exposed to noise from turning propellers and jet engines, but indicated “The decibel level of noise exposure is unknown, but is presumed to be hazardous.”

The Office noted that Dr. Mobley found and Dr. Laursen concurred that appellant's ratable loss of hearing was not due to noise exposure at work after January 1985.

Appellant disagreed with this decision and requested a hearing, which was held on January 22, 1998. In support of his claim, appellant submitted his description of exposure to loud noises during his employment prior to 1985 and he testified that he continued to be exposed to hazardous noise after 1985. Appellant testified that once he had been exposed to flight line noise he did not consider the noise from the forklifts as noise "because it's not like where you get your headaches and everything." He also submitted a partial copy of an article by a senior airman, that was of general application and resubmitted a copy of Dr. Geeze's July 19, 1996 report.

Following the hearing the employing establishment submitted a February 4, 1998 letter from Mel Perez, an employing establishment industrial hygienist, which noted that from January 1985 to 1995 appellant "worked as a management analyst, safety manager and transportation specialist at this time. The majority of this work was in North Kelly Air Force Base, a nonindustrial warehouse area. Hazardous noise data is not available for this area." Mr. Perez noted, however, that prior to January 1985 appellant was exposed, or potentially exposed, to hazardous noise, but that hearing protection was available.

Appellant also resubmitted reports from Drs. Geeze and Laursen and Capt. Waldo, a letter from Mr. Perez and notifications of personnel actions and a ground safety memorandum regarding hearing conservation, none of which addressed whether or not appellant continued to be exposed to hazardous noise after January 1985.

By decision dated April 7, 1998, the hearing representative affirmed the Office's February 21, 1997 denial of appellant's claim, finding that there was no evidence that appellant was exposed to hazardous noise subsequent to 1985, that Drs. Mobley and Laursen opined that there was no progression of hearing loss that occurs after removal from an excessively noisy environment, that any hearing loss that occurs after a claimant is removed from a dangerously high noise level job would not be due to the previous noise exposure, that since appellant was removed from high decibel exposure in January 1985, any subsequent hearing loss after January 1985 would not be considered causally related to factors of his federal employment and that appellant had failed to submit any medical opinion evidence to establish that he sustained further hearing loss after 1985, due to factors of his federal employment. The hearing representative found that Dr. Laursen's opinion constituted the weight of the medical opinion evidence as he was a Board-certified otolaryngologist.

On May 25, 1998 appellant requested reconsideration of the April 7, 1998 decision arguing that the June 19, 1996 letter written by Dr. Geeze had stated that the majority of appellant's loss of hearing occurred while he was working in hazardous noise and that it should be approved.<sup>3</sup> Appellant also submitted some 1988 employing establishment hearing conservation records, which were not signed by a physician, a noise exposure summary for

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<sup>3</sup> This letter had been previously submitted to the record and had been considered prior to both the Office's February 21, 1997 and April 7, 1998 decisions.

exposure prior to 1985 and an occupational noise exposure summary indicating that from January 1985 to April 1995 appellant was working in various locations where he was exposed to noise from conveyor belts, AGE equipment, forklifts, stock pickers, side reaches, warehouse noises, vehicle noises and loud talking for periods of seven or less hours per day.<sup>4</sup> However, no noise surveys for this subsequent period were provided to support appellant's contentions of continued hazardous noise exposure.

By decision dated July 7, 1998, the Office denied appellant's request for further review of his case on its merits finding that the evidence submitted was repetitive and cumulative and that, therefore, it did not provide a basis for reopening appellant's claim for further review on its merits.

The Board finds that this case is not in posture.

In the present case, the Board finds that there is a conflict in medical opinion evidence between Dr. Geeze, a Board-certified psychiatrist specializing in aerospace medicine, and Dr. Mobley and Dr. Laursen, a Board-certified otolaryngologist, as to whether appellant sustained a ratable loss of hearing after 1985, causally related to documented hazardous noise exposure prior to 1985 or to claimed noise exposure from 1985 to 1996.

Dr. Geeze opined, "As the majority of the hearing loss occurred while working in hazardous noise, I recommend approval." Dr. Geeze identified the period of hazardous noise exposure as being from 1971 to 1985; however, he noted that appellant's loss, when measured in 1986, was nonratable. He further noted, however, that a 1996 audiogram demonstrated a 5.6 monaural loss. Dr. Geeze provided no rationale explaining how or why this would occur after appellant's removal from hazardous noise exposure, yet still be related to that previous noise exposure and no evidence was submitted, which established that appellant had any hazardous noise exposure after 1985.

On the other hand, Dr. Mobley opined that noise-induced hearing loss ceases when exposure to excessive noise stops, such that there is no progression of hearing loss after the ear is removed from the excessively noisy environment. He opined that any hearing loss that occurred after a claimant is removed from the dangerously high noise level job would not be due to that previous noise exposure and noted that appellant was removed from a high decibel exposure job in January 1985 and was placed in a low noise environment. Dr. Mobley concluded, therefore, that any hearing loss after January 1985 would not be job related after removal from hazardous noise exposure. Dr. Laursen, a Board-certified otolaryngologist, concurred with the opinion of Dr. Mobley and also stated that, the workplace exposure as described would be sufficient to have caused the loss, but noted that appellant served in infantry and fired guns, which would account for slight noise damage in the left ear. Dr. Laursen diagnosed "noise-induced sensorineural hearing loss" due "in part or all" to noise exposure encountered in his federal civilian employment, but he agreed that any hearing loss after 1985 would not be due to appellant's employment. However, no medical authority was cited for this medical premises by either Dr. Mobley or Dr. Laursen.

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<sup>4</sup> These documents had also been previously submitted and considered by the hearing representative.

As Dr. Geeze felt that appellant's claim should be approved because the majority of his hearing loss occurred during his 1971 to 1985 hazardous noise exposure, but as Drs. Mobley and Laursen noted that appellant's hearing loss in 1986 was nonratable and that since his removal from a hazardous noise environment, any hearing loss would not be related to that previous hazardous noise exposure, a conflict in medical opinion evidence is created.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified otolaryngologist for an examination and a rationalized medical opinion to resolve the medical conflict regarding whether appellant's hearing loss in 1996 was caused by factually established hazardous noise during the period 1971 to 1985.

As this case is being remanded, the July 7, 1998 Office decision is rendered moot.

Consequently, the decision of the Office of Workers' Compensation Programs dated April 7, 1998 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.  
August 29, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member