

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES C. BRASHER and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, AL

*Docket No. 98-1328; Submitted on the Record;
Issued January 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that his binaural hearing loss is causally related to his federal employment.

On June 6, 1996 appellant, then a 62-year-old mechanical engineering technician, filed occupational disease and schedule award claims, alleging that noise exposure at work had caused a bilateral hearing loss. In an undated statement, he indicated that he always wore ear protection and was required to spend "numerous" hours where there was hazardous noise exposure created by diesel and turbine engines, welding, sheet metal work, heavy machining, component machining, reciprocating engines, engine dynamometers, transmission dynamometers and engine and auto machining. Appellant also stated that in 1991 he spent eight hours a day for two weeks at an engine dynamometer building, charting results of engines being tested.

In an August 20, 1996 memorandum, the employing establishment advised that appellant did not routinely work in a noise hazardous area and that his entry into noise hazardous areas was infrequent with minimal duration of exposure and that the potential for noise exposure above an 85 decibel time weighted average per Department of Labor standards did not appear to have been established by appellant. In an attached noise exposure history, the employing establishment indicated that, except for the two-week period indicated above when appellant worked in the engine dynamometer building, he had worked in buildings where no tools were used.

On November 14, 1996 the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts and the medical record, to Dr. Arthur F. Toole, a Board-certified otolaryngologist, for evaluation including an audiogram. The case was then referred to an Office medical adviser for review and, by decision dated January 30, 1997, the Office found that appellant's hearing loss was not causally related to his federal employment. Appellant timely requested reconsideration and submitted an additional report from Dr. Toole.

In an August 29, 1997 decision, the Office denied modification of the January 30, 1997 decision. The instant appeal follows.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained any hearing loss or other condition causally related to factors of his employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵

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.⁶ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Causal relationship is a medical issue,⁷ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁸ Neither the fact that appellant's hearing loss became apparent during a period of employment nor his belief

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

that his condition was caused or aggravated by his employment is sufficient to establish causal relationship.⁹

In this case, Dr. Toole provided a December 12, 1996 report in which he noted the absence of an audiogram from the date of employment¹⁰ and discussed his audiographic findings, stating:

“Without a strong history of noise exposure, it is difficult to state whether there was occurrence of hearing loss during this period of his [f]ederal employment. I think that, in general, this should be considered a hereditary type of sensorineural hearing loss and, while I am inclined to believe that the high frequency component is a portion of this type of hearing loss, I cannot state conclusively that it was not caused by noise exposure. Noise exposure causality does seem remote based on the papers provided to me that there was minimal exposure to potentially hazardous noise.”

In an attached Office Form CA-1332, Outline for Otologic Evaluation, Dr. Toole checked the “no” box, indicating that appellant’s hearing loss was not employment related.

An Office medical adviser reviewed Dr. Toole’s findings and concluded that appellant’s hearing loss was not employment related.

With his request for reconsideration, appellant submitted a February 4, 1997 report in which Dr. Toole stated that, according to appellant, he was exposed to more noise than was related on the noise exposure history. Dr. Toole concluded that a conflict existed regarding the noise exposure encountered by appellant and recommended that appellant’s condition be reviewed with a repeat audiogram.

The case was again referred to an Office medical adviser who advised that, based on the available information provided by the employing establishment regarding appellant’s noise exposure history, his hearing loss could not be attributed to exposure to hazardous noise during his federal employment.

In this case, appellant has failed to establish that he was exposed to hazardous levels of noise in the course of his federal employment. The weight of the evidence with regard to the level of exposure is constituted by the employing establishment noise exposure history which demonstrates that, except for a two-week period in 1991, appellant was not exposed to hazardous noise levels. Appellant has not submitted additional factual evidence to support that he was

⁹ See *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹⁰ The record contains employing establishment audiograms dated December 5, 1990 and November 18, 1991, a December 4, 1996 audiogram that accompanied Dr. Toole’s December 12, 1996 report, and a May 21, 1996 audiogram and June 4, 1996 report from Robin E. Auerbach, an audiologist. Under the Act an audiologist is not considered to be a physician. Section 8101(2) defines “physician” as including “surgeons, podiatrists, dentists, clinical physiologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.” The Board notes that this definition omits any mention of audiologists, and consequently, Ms. Auerbach’s reports do not constitute probative medical evidence in this case.

exposed to any greater levels of noise than the survey results demonstrated. While Dr. Toole, in his February 4, 1997 report advised that there was a conflict between appellant's assertions regarding the level of noise exposure and that furnished by the employing establishment, the burden is on appellant to establish the essential elements of his claim.¹¹ Dr. Toole had initially advised that, based on the employing establishment noise exposure history, appellant's hearing loss was not employment related. Consequently, appellant failed to factually establish his claim and is, therefore, not entitled to a schedule award.

The decision of the Office of Workers' Compensation Programs dated August 29, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ *Supra* note 2.