

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH B. STANLEY and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVY SHIPYARDS, Philadelphia, PA

*Docket No. 99-665; Submitted on the Record;
Issued June 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On July 7, 1995 appellant filed a notice of occupational disease alleging that he sustained a loss of hearing in the course of his federal employment. He stated that he did not know when he first became aware of the illness, but that in 1991 he realized he had trouble hearing people. Appellant retired in 1993.

On July 20, 1995 the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts, to Dr. Herbert Kean, a Board-certified otolaryngologist, for a second opinion examination. On August 17, 1995 he stated that he examined appellant without the benefit of the records of his employment. Dr. Kean stated that a hearing test was performed which was not consistent with appellant's clinical level of hearing. He stated that the test showed a flat loss bilaterally which was inconsistent with a noise-induced hearing loss. Dr. Kean, therefore, stated that the audiogram was unreliable. He stated that he would render an opinion after reviewing appellant's work records.

On September 29, 1995 the Office medical adviser agreed that Dr. Kean's audiogram was unreliable. Consequently, the Office referred appellant to Dr. Arnold K. Brenman, a Board-certified otolaryngologist, for another examination. On November 2, 1995 he reported the results from his November 1, 1995 examination. Dr. Brenman noted that appellant was employed at the shipyard for 13 years and that appellant reported having hearing difficulty during the last five to six years. He noted bilateral intermittent tinnitus and that appellant suffered from diabetes. Dr. Brenman indicated that appellant wore ear plugs while employed at the employing establishment. He stated that appellant was exposed to a lesser degree of noise when he was employed as a plumber for 18 to 20 years prior to his employment with the employing establishment. Dr. Brenman noted that appellant was exposed to noise as a tractor

trailer driver and when he was exposed to artillery in the military. He further noted that appellant used power tools at home. Dr. Brenman stated that pneumatic otoscopy revealed normal ear drums. He conducted two audiograms and found that the first audiogram was more reliable due to the level of appellant's cooperation. He stated that the audiogram showed permanent bilateral sensori-neural hearing loss. Dr. Brenman opined that it showed a relatively flat pattern, slightly descending in the higher frequencies and slightly worse in the left ear. He concluded, notwithstanding any historic evidence of the potential for occupational hearing loss, that the audiometric pattern was not consistent with the occurrence of occupational hearing loss. Dr. Brenman stated that because appellant's family members demonstrated hearing losses that appellant's loss could be genetic. He also stated that appellant's described onset of hearing loss during the last five to six years was inconsistent with his long history of occupational exposure. Finally, he indicated that appellant's diabetic condition could have contributed to appellant's recent awareness of a hearing loss.

The Office medical adviser subsequently indicated that Dr. Brenman's test results were reliable.

By decision dated January 5, 1996, the Office denied appellant's claim because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability. In an accompanying memorandum, the Office indicated that it relied on Dr. Brenman's opinion to find that appellant failed to establish any causal relationship between the claimed condition and the exposure to noise in his federal employment.

On January 24, 1996 appellant's representative requested a hearing, which was held on July 23, 1996.

By decision dated August 7, 1996, the Office hearing representative found that the case was not in posture for decision. The hearing representative noted that, although the Office referred appellant to two physicians and obtained two reports, including one from Dr. Brenman negating causal relationship, neither of the physicians were supplied with appellant's employment records to include his preemployment and annual audiograms. Consequently, the hearing representative found that these reports were not based on a proper factual or medical background to be determinative on the question of causal relationship. He set aside the January 5, 1996 decision and remanded the case to the Office so that it could provide Dr. Brenman with appellant's employment records and obtain an opinion on whether appellant's hearing loss was causally related to his employment. The hearing representative then directed the Office to issue a *de novo* decision.

On October 11, 1996 the Office supplied Dr. Brenman with the employing establishment's audiograms of appellant taken between 1982 and 1993 and requested that he provide an opinion on whether he now believed any portion of appellant's hearing loss stemmed from his exposure to noise in his federal employment.

On October 22, 1996 Dr. Brenman stated that appellant's preemployment audiogram of 1982 showed a mild degree of threshold elevation in the right ear at 1,000 hertz (Hz) and 2,000 Hz and in the left ear at 6,000 Hz. He stated that the most recent reliable audiogram from the employing establishment was taken on November 24, 1992. Dr. Brenman stated that, when this

test was compared to the 1982 test, the right ear demonstrated thresholds in agreement to the older test, within plus or minus 5 decibels, except for a threshold increase of 15 decibels at 4,000 Hz and 10 decibels at 6,000 Hz. He further noted that comparison of the left ear thresholds also demonstrated agreement to the old tests, within plus or minus five decibels, except for threshold increases of 10 decibels at 1,000 Hz and 3,000 Hz and of 15 decibels at 4,000 Hz. Dr. Brenman opined that the degree of threshold decrease described over this time period did not reflect damage related to exposure to hazardous noise. Furthermore, he stated that the audiometric configurations of all the audiograms between 1982 and 1992 were not consistent with noise trauma as a cause for threshold elevation. Dr. Brenman also compared appellant's last reliable audiogram while working with his postretirement audiogram taken on November 1, 1995. He stated that the more recent audiogram demonstrated an increase in threshold over this period of three years. In this regard, Dr. Brenman noted that right ear thresholds were greater by 25 decibels at 500 Hz, by 20 decibels at 1,000 Hz, 2,000 Hz, 4,000 Hz and 6,000 Hz, and by 35 decibels at 3,000 Hz. He further noted that thresholds in the left ear were greater by 25 decibels at 5,000 Hz and 1,000 Hz, by 30 decibels at 2,000 Hz, 3,000 Hz, and 4,000 Hz, and by 15 decibels at 6,000 Hz. Dr. Brenman indicated that the comparison indicated that substantial worsening of hearing occurred after appellant left the employing establishment bolstering his previous opinion that appellant's hearing loss was not employment related. He concluded that no portion of appellant's hearing loss was medically connected to his exposure to noise in his federal employment.

By decision dated November 26, 1996, the Office denied appellant's claim finding that the evidence failed to establish that the claimed hearing loss was causally related to the accepted employment noise exposure. In an accompanying memorandum, the Office indicated that it relied on the opinion of Dr. Brenman to find that appellant's hearing loss was not causally related to factors of federal employment.

On December 2, 1996 appellant's representative requested a hearing, which was held on May 20, 1997.

By decision dated June 25, 1997, the Office hearing representative affirmed the Office's November 26, 1996 decision denying the claim. The hearing representative indicated that Dr. Brenman's opinion constituted the weight of the medical evidence as he supported his opinion with adequate rationale, based on a thorough examination and a review of the entire medical record.

On September 18, 1997 appellant's representative requested reconsideration. In support, he submitted an August 15, 1997 report from an unknown physician which did not address whether appellant's hearing loss stemmed from his employment and a related August 18, 1997 audiogram.

By decision dated November 28, 1997, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office noted that appellant failed to submit any rationalized opinion addressing the relationship between his current hearing loss and his federal employment. It, therefore, found that the weight of the medical evidence continued to rest with the opinion of Dr. Brenman, which was supported by the historical record and his examination.

On June 30, 1998 appellant's representative again requested reconsideration. In support, he submitted a June 2, 1998 report from Dr. Robert N. Lindhold, who recorded appellant's complaints and noted his historical exposure to industrial noise. He reviewed appellant's past medical history, including his history of diabetes and the audiograms conducted since 1982. Dr. Lindhold also conducted a physical examination. He concluded, without any elaboration, that appellant had a "[n]oise[-]induced hearing loss with some worsening associated with age (presbycusis)."

By decision dated October 1, 1998, the Office again reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of its prior decision. The Office indicated that the rationalized opinion of Dr. Brenman, finding no evidence of a causal relationship between appellant's hearing loss and his federal employment, outweighed the unexplained opinion of Dr. Lindholm.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact 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.²

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 the 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.³

In the present case, the only medical evidence of record that supports appellant's claim that he sustained a hearing loss due to noise exposure from his federal employment was the June 2, 1998 report from Dr. Lindhold. Although he reviewed appellant's history and conducted an examination, he provided no explanation for his conclusion that appellant had a "[n]oise-induced hearing loss with some worsening associated with age (presbycusis)." Consequently, Dr. Lindhold's unexplained opinion addressing the causal relationship between appellant's hearing loss and his employment is entitled to little weight.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Jerry D. Osterman*, 46 ECAB 500 (1995).

⁴ *Jean Culltion*, 47 ECAB 728 (1996).

In contrast, Dr. Brenman, the second opinion physician and a Board-certified otolaryngologist, provided a well-rationalized medical opinion supported by the medical record. In this regard, he stated that because appellant's preemployment audiogram in 1982 and his latest reliable audiogram while employed in November 24, 1992 showed only mild threshold changes that the tests were inconsistent with an occupational-induced hearing loss. Furthermore, Dr. Brenman explained that appellant's postretirement audiogram taken on November 1, 1995 showed a marked increase in the thresholds when compared to the November 24, 1992 audiogram and, therefore, demonstrated that the hearing loss was not related to appellant's federal employment since the loss occurred following appellant's federal employment. Accordingly, his well-rationalized medical opinion supported by his complete review of the medical records, including all the employment audiograms and his thorough examination constitutes the weight of the medical evidence.⁵

The decision of the Office of Workers' Compensation Programs dated October 1, 1998 is affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁵ *Id.*