

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES C. COOK and DEPARTMENT OF THE AIR FORCE,  
646 MSSQ, EGLIN AIR FORCE BASE, FL

*Docket No. 99-6; Submitted on the Record;  
Issued November 1, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he developed a sensorineural hearing loss in the performance of duty, causally related to factors of his federal employment.

On July 11, 1963 appellant, then a 39-year-old forward observer, was in a bunker on a missile testing firing range when a missile salvo fired from an F-100 hit the bunker, killing two air force officers and wounding 14 others. The Office of Workers' Compensation Programs accepted that appellant sustained complex wounds of the face and neck, complex open wounds of the right forearm, an open fracture of his right tibia, traumatic arthropathy of the right lower leg and amputation of his left thumb. Appellant underwent 35 reconstructive surgeries to repair his face, neck, leg and arm.<sup>1</sup> He was granted compensation for wage loss due to temporary total disability. Appellant did not return to work, and he accepted disability retirement on May 7, 1976.

On November 1, 1996 Dr. Donald E. Hamilton, a Board-certified facial reconstructive surgeon, noted that for the preceding five years appellant had noted decreased hearing in both ears which seemed to be worsening. A symmetrical high frequency sensorineural hearing loss was diagnosed.

In a November 6, 1996 audiometric testing report from the Miracle Ear Hearing Center, the hearing aid specialist noted that appellant's hearing had been weak since the 1963 trauma with an 85 percent loss of hearing in the left ear and a 75 percent loss of hearing in the right ear. An October 24, 1996 audiometric evaluation tracing had demonstrated the following hearing thresholds in decibels at 500, 1,000, 2,000 and 3,000 cycles per second (cps or Hertz): 25, 35,

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<sup>1</sup> Appellant claimed that both legs were broken, with one severely shattered, that he developed osteomyelitis and deformity in the right lower extremity, that his back was injured, that his face was blown off, that he sustained a severe blow to his head such that his eyes did not dilate to this day, and that the severe blow also had an effect on his hearing.

40 and 55 decibels in the right ear respectively, and 25, 40, 50 and 65 decibels in the left ear. A February 6, 1976 civil service medical examination reevaluation at the time of appellant's disability retirement had demonstrated the following hearing thresholds in decibels at 500, 1,000, 2,000 and 3,000 cps: 20, 25, 30 and 35 decibels in the right ear respectively, and 20, 30, 25 and 35 decibels in the left ear.

On December 16, 1996 appellant requested that the employing establishment buy him some hearing aids. He noted the consequences of the 1963 explosion and also indicated that he had been around jet plane noise for seven to eight years.<sup>2</sup>

By report dated January 13, 1997, Dr. Hamilton noted appellant's history of the 1963 explosion injuries and seven to eight years of aircraft noise exposure, indicated that October 24, 1996 audiometric testing revealed symmetrical moderate to severe high frequency sensorineural hearing loss,<sup>3</sup> and opined:

“Although no one can link causal relationship directly of hearing loss to noise exposure, unless hearing is tested right before and right after noise exposure, certainly his hearing loss could reasonably be causally related to both his 1963 injury, and jet engine noise exposure while working with the [employing establishment].

“A delay in hearing loss can occur after noise exposure.”

Dr. Hamilton opined that appellant had a 22.2 percent binaural hearing impairment.

A December 9, 1997 audiogram performed for Dr. Charles W. Grayson, a Board-certified osteopathic otolaryngologist and facial plastic and reconstructive surgeon, demonstrated the following hearing thresholds in decibels at 500, 1,000, 2,000 and 3,000 cps: 30, 50, 45 and 55 decibels in the right ear respectively, and 25, 45, 45 and 60 decibels in the left ear.

By report dated December 10, 1997, Dr. Grayson noted:

“[Appellant] was seen [December 9, 1997] complaining of decreased hearing in both ears that has seemed to have worsen[ed] over the past six years or so. He had an original injury in 1963 which was a blast injury and had extensive facial trauma. He also has worked around chronic noise on the flight line until 1976 when he retired. At the time of his physical examination, dated February 6, 1976, he was noted to have a moderate high frequency sensorineural hearing loss.... I believe that chronic noise exposure from his work on the flight line is a major

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<sup>2</sup> Appellant reiterated his hearing aid request on February 12, 1998 noting his military noise exposures, his flight line noise exposure starting in 1956, and his practice range explosion exposures, including the 1963 bunker explosion.

<sup>3</sup> The testing audiologist noted that appellant claimed a 10-year history of exposure to flight line noise without hearing protection, a gradual decrease in hearing sensitivity for the previous five years, and right ear tinnitus for the preceding year.

contributing factor to his high frequency sensorineural hearing loss. I do not feel that the blast injury in 1963 is a major contributing factor at this time.”

By decision dated April 1, 1998, the Office rejected appellant’s claim for employment-related hearing loss and payment for hearing aids, finding that, although Dr. Hamilton opined that his hearing loss could reasonably be related to both the 1963 explosion and to flight line noise, this opinion was speculative and unrationalized, and that Dr. Grayson opined that the loss in hearing was due to the chronic noise exposure on the flight line, and that the blast injury was not a major contributing factor. The Office found that appellant had failed to establish his claim.

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

In this case, the Office accepted that appellant sustained multiple injuries on July 11, 1963 while in the performance of duty. It also accepted that he was exposed to flight line noise following his recovery up until 1976. Dr. Hamilton noted that appellant’s history of the 1963 explosion injuries and his seven to eight years of aircraft flight line noise exposure, and he indicated that appellant’s hearing had decreased bilaterally for the preceding five years, stating that appellant’s hearing loss certainly “could reasonably be causally related to both his 1963 injury and the jet engine noise exposure while working” on the flight line.<sup>4</sup> Dr. Hamilton noted that a delay in hearing loss can occur after noise exposure, and indicated that appellant had a 22.2 percent binaural hearing impairment.

Further, Dr. Grayson, a Board-certified otolaryngologist, noted appellant’s history of the 1963 blast injury and of chronic noise exposure on the flight line until 1976, and he opined that appellant’s chronic noise exposure from his work on the flight line was a major contributing factor to his high frequency sensorineural hearing loss.

Proceedings under the Federal Employees’ Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>5</sup> This holds true in occupational claims as well as in initial traumatic injury claims. In this case, although none of appellant’s treating physicians’ reports contain rationale sufficient to discharge his burden of proving by the weight of reliable, substantial and probative evidence that he sustained a high frequency sensorineural hearing loss, causally related to his history of chronic flight line noise exposure or to other occupational factors, they constitute substantial, uncontradicted evidence in support of appellant’s claim and raise an uncontroverted inference of causal relationship that is sufficient to require further development of the case record by the Office.<sup>6</sup> Additionally, there is no opposing medical evidence in the record.

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<sup>4</sup> The audiologist testing appellant for Dr. Hamilton noted that appellant actually had a 10-year exposure history to flight line noise without hearing protection.

<sup>5</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Therefore, the case will be remanded to the Office for the compilation of a statement of accepted facts and specific questions to be addressed, to be followed by a referral of appellant, together with the relevant case record, to an appropriate specialist for a rationalized medical opinion on whether appellant sustained employment-related bilateral loss of hearing.

Consequently, the decision of the Office of Workers' Compensation Programs dated April 1, 1998 is hereby set aside, and the case is remanded to the Office for further development in accordance with this decision and order of the Board.

Dated, Washington, DC  
November 1, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member