

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID SHULER and DEPARTMENT OF TRANSPORTATION, FEDERAL
AVIATION ADMINISTRATION, Miami, FL

*Docket No. 00-2374; Submitted on the Record;
Issued August 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that he had any disability causally related to his August 7, 1994 employment injury.

On August 7, 1994, appellant, then a 32-year-old air traffic controller, dialed in to get a signal and received a loud tone in his right ear. He stopped working the next day and received continuation of pay from August 8 through September 21, 1994. He subsequently claimed that he had tinnitus and headaches due to the August 7, 1994 employment injury.

In a December 1, 1994 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence of record failed to establish a causal relationship between the employment injury and the claimed condition. Appellant requested a hearing, which was conducted on October 26, 1995.

In a January 16, 1997 decision, the Office hearing representative found that appellant had failed to establish that his headaches, dizziness, depression and disability were causally related to his work. The hearing representative therefore affirmed the Office's December 1, 1994 decision. Appellant requested reconsideration. In a May 22, 1996 decision, the Office denied reconsideration on the grounds that appellant's request was insufficient to warrant review of the prior decisions.

In a January 15, 1997 letter, appellant again requested reconsideration. In a February 20, 1997 merit decision, the Office denied appellant's request for reconsideration. In a letter dated February 20, 1998, appellant again requested reconsideration. In a March 10, 1998 decision, the Office denied appellant's request for reconsideration as untimely and lacking clear evidence of error.

Appellant appealed to the Board, which found that appellant's request for reconsideration had been timely filed. The Board therefore reversed the Office's March 10, 1998 decision and

remanded the case for further action.¹ In a March 31, 2000 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that his medical conditions were causally related to the August 7, 1994 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative, and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.³ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁴ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions, which are alleged to have caused or exacerbated a disability.⁶

In an August 11, 1994 report, Dr. Julian H. Groff, a Board-certified otolaryngologist, stated that appellant complained of headaches, ringing in the right ear, dizziness and occasional sensitivity to noise. He noted appellant's history of receiving a sudden blast of noise in the right ear on August 7, 1994. Dr. Groff reported that the ear, nose and throat examination was within normal limits, including a normal audiometric evaluation. He could not explain appellant's headaches and right ear discomfort other than a tentative diagnosis of a possible temporomandibular joint (TMJ) syndrome. He was unsure why this condition could be related to sudden exposure to loud sounds unless the sounds caused appellant to begin an episode of bruxism (grinding of the teeth) which he might be doing intermittently.

In an October 3, 1994 report, Dr. Bruce Hoffen, a Board-certified neurologist, stated that appellant had a history of headaches since August 7, 1994. Dr. Hoffen reported appellant had an unremarkable neurological examination. He made no comment on the issue of causal relationship.

In a November 1, 1994 report, Dr. Craig Shapiro, an osteopath, gave a history of appellant's employment injury. He diagnosed noise-induced tinnitus and headaches of unknown etiology.

¹ Docket No. 98-1965 (issued February 22, 2000).

² 5 U.S.C. §§ 8101-8193.

³ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁴ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁵ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁶ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

In a November 9, 1994 form report, Dr. Jorge Dorta-Duque, a Board-certified psychiatrist, stated that appellant had major depression which he related to appellant's tone injury sustained at work.

In a November 17, 1994 report, Dr. Jonathan D. Cooper, a Board-certified otolaryngologist, indicated that appellant complained of bilateral tinnitus, dizziness, and headaches shortly after the August 7, 1994 noise exposure with a subsequent development of intolerance to noise. Dr. Cooper related that the earache and dizziness subsided but the intolerance to noise and headaches had continued. He reported that in examination both of appellant's ears appeared to be normal. Appellant exhibited behavioral signs of intolerance to noise in that he did not seem comfortable when exposed to otherwise normal noise levels. An audiometric examination was normal. Dr. Cooper diagnosed noise-induced tinnitus. He stated that he could not explain appellant's severe headaches solely from a history of acoustic trauma. He commented that the sensitivity to noise was a poorly understood phenomenon but had been described in other patients exposed to loud tone bursts.

In a February 1, 1995 report, Dr. Ian Weinstein, a Board-certified internist stated that appellant's current diagnosis was chronic tension headaches, tinnitus and hyperacusis.

In an October 11, 1996 report, Dr. Elton P. Rosenblatt, a dentist, performed a series of tests, including electromyographic studies, computerized sonography, and computerized mandibular scanning. He diagnosed musculoskeletal dysfunction and TMJ dysfunction. He stated: "Since [appellant] did not suffer any of the problems prior to the accident, it would be logical to assume that his problems are all a result of the accident he experienced on his job." In a January 15, 1997 affidavit, Dr. Rosenblatt stated that he based his opinion on the test results, the lack of prior symptoms and the incident of a tone burst injury.

In a January 15, 1997 affidavit, Dr. Cooper diagnosed tinnitus and hyperacusis and noted that appellant had been observed to have physical discomfort when exposed to sound. He stated that although appellant had no hearing loss, tinnitus and hyperacusis could exist without such a hearing loss, as in appellant's case. He indicated that, in his opinion, a loud noise could result in bilateral tinnitus. He concluded, to a reasonable degree of medical certainty, that the employment injury caused appellant's tinnitus and hyperacusis because appellant had no prior symptoms and tinnitus and hyperacusis have been reported after tone burst injuries such as the type appellant experienced.

Dr. Hoffen, Dr. Shapiro and Dr. Weinstein did not present any opinion on the issue of causal relationship. Their reports, therefore, do not support appellant's claim of a causal relationship between his exposure to a loud burst of noise on August 7, 1994 and his subsequent conditions of tinnitus, hyperacusis and depression.

Dr. Duque stated that appellant had depression which he related to the employment injury. However, he gave no explanation of how appellant's employment injury caused his depression. Dr. Duque's report, therefore, has little probative value.

Dr. Groff indicated that he could not relate appellant's headaches and right ear pain to the employment injury unless he had TMJ dysfunction, which might have been caused by bruxism

arising from the August 7, 1994 employment injury. Dr. Groff's report is highly speculative and therefore has insufficient probative value to meet appellant's burden of proof.

Drs. Rosenblatt and Cooper related appellant's conditions to his employment injury because he did not have the diagnosed conditions and symptoms before the employment injury but did have them after the August 7, 1994 incident. However, an opinion that a condition is causally related to an employment injury because the claimant was asymptomatic before the injury is insufficient, without supporting rationale, to establish a causal relationship.⁷ Dr. Rosenblatt and Dr. Cooper only stated generally that a loud noise burst had been reported to have caused tinnitus and hyperacusis. Neither physician presented a physiological explanation on how the loud noise burst would have caused appellant's conditions. Their reports therefore have limited probative value. The medical evidence submitted by appellant does not have sufficient probative value to establish that his conditions were causally related to the employment injury.

The decision of the Office of Workers' Compensation Programs dated March 31, 2000 is hereby affirmed.

Dated, Washington, DC
August 7, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁷ *Kimper Lee*, 45 ECAB 565 (1994).