

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON F. ROGINA and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Dutch John, UT

*Docket No. 00-2495; Submitted on the Record;
Issued July 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an employment-related hearing loss.

On October 14, 1997 appellant, then a 54-year-old power plant mechanic, filed a claim alleging that he had a loss of hearing causally related to noise exposure during his federal employment. By decision dated May 4, 1998, the Office of Workers' Compensation Programs denied the claim. In a decision dated August 24, 1999, an Office hearing representative remanded the case for additional development.

By decision dated December 10, 1999, the Office again denied the claim on the grounds that appellant had not established a hearing loss causally related to noise exposure during federal employment. In a decision dated June 5, 2000, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established an employment-related hearing loss.

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.¹ The evidence required to establish causal relationship is rationalized medical opinion evidence,

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.² Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* using the frequencies of 500, 1,000, 2,000 and 3,000 Hertz (Hz). The threshold levels at each frequency are added up and averaged to determine the estimated hearing level for speech. A “fence” of 25 decibels (dBs) is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The Board has concurred in the Office’s use of this standard for evaluating hearing losses for schedule award purposes.⁴

The Office initially referred appellant for examination by Dr. Leland Johnson, an otolaryngologist. On May 10, 1998 Dr. Johnson submitted a Form CA-1332 (outline for otologic evaluation) checking a box that sensorineural hearing loss was “not due” to noise exposure during federal employment. Dr. Johnson explained that the August 31, 1998 audiogram was unreliable and demonstrated a nonorganic response; a repeat test again showed no agreement between the SRT and pure tone responses. The otolaryngologist noted that the audiologist felt that appellant’s actual hearing level may be close to a 1981 audiogram.⁵ In a report dated May 4, 1998, an Office medical adviser concurred that any hearing loss was not employment related. An Office hearing representative felt that there was not sufficient explanation with respect to the inconsistent test results, and remanded the case for a new second opinion examination.

In a Form CA-1332 submitted on December 6, 1999, Dr. Dean Gray, an otolaryngologist, also checked a box that hearing loss was “not due” to federal noise exposure. Dr. Gray found that pure tone audiograms during appellant’s employment were so inconsistent that they could not be used to determine hearing loss progression.⁶ He noted that the November 29, 1999 audiogram reported invalid results. Dr. Gray stated that appellant’s noise exposure in federal employment was for abbreviated periods and was not sufficient to cause damage, and appellant exhibited the classic signs of a functional type of hearing loss or even malingering on hearing tests.

² See *John W. Butler*, 39 ECAB 852 (1988).

³ *Id.*

⁴ See *Danniel C. Goings*, 37 ECAB 781 (1986).

⁵ Appellant’s federal employment essentially began in 1983; he submitted a job history that does indicate some federal employment in 1966 to 1967, and 1970 to 1973, with little information provided on noise exposure.

⁶ He noted that he did not review preemployment audiograms, but given the inconsistencies of the reviewed audiograms he felt it was unnecessary to review additional audiograms.

In a report dated December 9, 1999, the Office medical adviser again indicated that appellant's hearing loss was not employment related.

The record therefore contains opinions from two second opinion otolaryngologists, as well as an Office medical adviser, that appellant did not have an employment-related hearing loss. On the other hand, appellant has not submitted any medical evidence providing reliable audiometric testing and a reasoned opinion that any hearing loss was causally related to noise exposure during federal employment. The Board finds that the weight of the medical evidence does not establish an employment-related hearing loss in this case.

The decisions of the Office of Workers' Compensation Programs dated June 5, 2000 and December 10, 1999 are affirmed.

Dated, Washington, DC
July 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member