

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA M. STEVENSON and DEPARTMENT OF THE ARMY
CECOM ACQUISITION CENTER, Fort Monmouth, NJ

*Docket No. 00-1091; Submitted on the Record;
Issued June 25, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an aggravation of her hearing condition due to factors of her federal employment.

On January 21, 1998 appellant, then a 42-year-old contract specialist, filed an occupational disease claim alleging that her hearing loss condition was aggravated by jack hammering during the renovation of a bathroom on the floor where she worked. The employing establishment stated that appellant stopped work on January 14, 1998 and returned on January 15, 1998 and was last exposed to the noise on January 13, 1998.

Accompanying her claim were a January 15, 1998 health unit note by Dr. Afifa W. Istafanous, a Board-certified pathologist, noting possible noise-induced nonjob-related bilateral hearing loss; a January 15, 1998 hearing conservation data report validated by Dr. Istafanous, indicating a nonjob-related bilateral hearing loss; a January 13, 1998 report by appellant stating that while working at her desk a contractor started drilling during bathroom renovations causing increased tinnitus and hearing loss; and a January 21, 1998 statement by appellant identifying the renovation noise as contributing to her condition.

By letters dated February 18, 1998, the Office of Workers' Compensation Programs requested additional information from appellant and the employing establishment.

By letter dated March 2, 1998, the Office referred appellant to Dr. T.P. Thomas for a second opinion examination. In a March 11, 1998 report, Dr. Thomas diagnosed bilateral neurosensory hearing loss with tinnitus, which was not due to noise exposure. He explained: "The duration and intensity of the sound in this case is not severe enough to cause a transient threshold shift to a permanent one."

The district medical adviser, after reviewing the case, which included a review by an audiologist, opined that appellant's current condition was not due to work-related noise exposure.

Dr. Emilio A. Roncace, a Board-certified otolaryngologist, who stated that he saw appellant on March 16, 1998 and opined that appellant's condition was related to on-the-job noise exposure. On April 20, 1998 Dr. Roncace stated: "within a reasonable degree of medical certainty the jackhammer noise that [appellant] was exposed to did aggravate any existing hearing loss."

By decision dated September 22, 1998, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that her medical condition was causally related to employment factors.

By letter dated October 13, 1998, appellant requested a hearing, which was held on June 29, 1999. By decision dated October 12, 1999, the hearing representative affirmed the September 22, 1998 decision. The hearing representative found that the evidence of record failed to establish that appellant sustained an aggravation of her hearing condition due to factors of her employment.

The Board finds that this case is not in posture for decision due to a conflict in the medical evidence.

Section 8123(a) of the Federal Employees' Compensation Act provides that, where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination¹ Due to the conflict between Drs. Thomas and Roncace's, opinions as to whether the employment-related incident aggravated appellant's hearing loss condition, the case must be remanded for referral of their reports, the case record and a statement of accepted facts to an impartial medical specialist to resolve this conflict. The Office should then develop the evidence as it deems necessary and issue an appropriate decision.

¹ 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated June 29, 1999 is set aside and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, DC
June 25, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member