

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FENTON G. ERICKSON and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Ogden, UT

*Docket No. 00-1245; Submitted on the Record;  
Issued June 1, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained a compensable hearing loss causally related to factors of his federal employment.

On December 16, 1997 appellant, then a 42-year-old tractor operator, filed an occupational disease claim alleging that he sustained binaural hearing loss causally related to factors of his federal employment. He alleged that he first became aware of his alleged hearing loss and realized that it was caused or aggravated by his employment on August 14, 1997. Appellant did not stop work.

In a supplemental statement, appellant alleged that the employing establishment advised him that he sustained a hearing loss. He further alleged that he subsequently underwent a hearing test on December 11, 1997 at Miracle Ear and that he did not have prior hearing problems.

The employing establishment submitted a report dated May 21, 1998 in which it noted appellant's employment history and employment-related noise exposure. The employing establishment argued that appellant's hearing loss was not employment related because he had stable hearing from 1973 to 1981, during which time he was exposed to hazardous noise and because he sustained a unilateral low-frequency hearing loss which was inconsistent with occupational noise exposure. The employing establishment also submitted a summary of occupational noise exposure.

To support his claim, appellant submitted a report dated August 20, 1998 in which Dr. John R. Siddoway, a Board-certified otolaryngologist, stated that he had treated appellant since April 20, 1995 for obstructive sleep apnea. He also stated that appellant underwent uvulopalatopharyngoplasty surgery on June 19, 1998. Regarding appellant's alleged hearing loss, Dr. Siddoway stated:

“[Appellant's] initial complaint of difficulty hearing from his right ear started on November 2, 1995. He had an audiogram done on November 16, 1995 showing a low frequency right-sided neurosensory hearing loss to about 55 decibels. [Appellant's] speech reception threshold was 20 decibels in the right ear. This was compared to his audiogram done at [the employing establishment] on August 15, 1995 which shows a hearing loss at 500 [Hertz Hz] of 25 decibels [dBs]. This test was repeated in August of about 1996 showing no change in the hearing from 1995. Therefore this hearing loss was not the result of nor had changed due to his surgery on June 19, 1996.”

Appellant also submitted a letter from the employing establishment dated September 8, 1998 in which Abdollah P. Moghaddam stated that an August 31, 1998 hearing test revealed that appellant had a “significant hearing loss due to overexposure to hazardous noise.” Mr. Moghaddam further stated that corrective action would prevent further hearing loss and he asked whether appellant's supervisor could reduce shop noise and assist with protective hearing devices.

Appellant further submitted an undated audiogram, signed by Mark E. Neilson III, an examiner, showing the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hz frequency levels: 30, 15, 15 and 25 dBs for the left ear; and 65, 35, 20 and 20 dBs for the right ear.

Appellant also submitted a hearing conservation data report indicating that Cindy L. Gill administered audiograms on unknown dates.

Appellant submitted statements dated December 16 and 22, 1997 in which he noted his employment-related noise exposure and job duties. In a statement dated August 25, 1998, appellant disagreed with the employing establishment's position that he was not exposed to hazardous noise sufficient to cause his alleged hearing loss.

By letter dated August 13, 1998, the Office of Workers' Compensation Programs referred appellant, together with his medical records and a statement of accepted facts, to Dr. Leland Johnson, a Board-certified otolaryngologist, for audiologic and otologic evaluations. In an undated form report, he noted that appellant's federal employment commenced on June 19, 1974 and that an audiogram performed on June 28, 1973 showed normal bilateral hearing. Based on a comparison between the June 28, 1973 audiogram and a current one, Dr. Johnson diagnosed a right-sided low and mid-frequency sensorineural hearing loss and a very mild bilateral high frequency sensorineural hearing loss. He stated that appellant's low and mid-frequency right ear sensorineural hearing loss developed between audiograms dated August 15, 1995 and June 12, 1996. Dr. Johnson opined that the intensity and duration of appellant's workplace noise exposure was insufficient to have caused his hearing loss. He stated: “This type of hearing loss

is not that expected from noise exposure. It involves low and mid frequencies and it is unilateral.”

A September 8, 1998 audiogram obtained by Dr. Johnson and an accompanying report showed the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hz frequency levels: 65, 60, 25 and 20 dBs for the right ear; and 15, 5, 10 and 25 dBs for the left ear. The audiogram reliability was rated “excellent” and was performed by Lisa Dahlstrom, an audiologist and reviewed by Dr. Johnson.

The Office referred appellant’s medical record, including Dr. Johnson’s report, to an Office medical adviser. In a report dated October 19, 1998, the Office medical adviser opined that appellant’s hearing loss was not caused or aggravated by noise exposures during his federal employment. He stated that he agreed with Dr. Johnson’s rationale and found that appellant reached maximum medical improvement on April 27, 1998.

By decision dated April 13, 1999, the Office denied appellant’s claim on the grounds that the medical evidence of record failed to establish that his hearing loss was causally related to hazardous workplace noise.

By letter dated April 23, 1999, appellant requested an oral hearing before an Office hearing representative. To support his request, appellant submitted photocopies of reference material on ear function and hearing loss.

On September 22, 1999 an oral hearing was held before an Office hearing representative. Appellant testified that he failed his 1995 hearing test conducted by the employing establishment and he was subsequently advised to obtain a second test. He further testified that he was tested by Miracle Ear, which diagnosed “reverse noise hazardous and noise loss.” Appellant stated that he was next examined by Dr. Siddaway, who opined that appellant’s condition was caused by his employment. Appellant discussed his exposure to hazardous noise. He alleged that from 1982 to 1984 he worked “out of an office” but was exposed to the noise of running aircraft while loading passengers and baggage. Appellant stated that while he worked as a travel clerk, flight line mechanic and motor vehicle mechanic he was exposed to running aircraft on the flight line but that information was not contained in his job descriptions. He alleged that he was exposed to noise for 27 years and that he wore earplugs when he worked as a travel clerk. Appellant discussed his work history.

In a statement dated October 18, 1999, the employing establishment responded to appellant’s testimony. It noted his work history and stated that his preemployment hearing test showed normal bilateral hearing. It further stated that annual monitoring audiograms performed between 1974 and 1981, during which time appellant was exposed to hazardous noise, showed that his hearing was normal and stable. The employing establishment argued that from 1982 to 1995, appellant was not exposed to hazardous noise and, therefore, he was not enrolled in the Hearing Conservation Program and did not receive monitoring hearing tests. It noted that appellant began work as a tractor operator in 1995 and was exposed to hazardous noise. The employing establishment stated that a baseline hearing test, performed on August 11, 1993, showed that appellant’s hearing had changed but that subsequent examinations from 1993 to

1995 did not show a change in his hearing. It again argued that appellant's low-frequency, severe unilateral hearing loss was not consistent with occupational noise exposure.

By decision dated November 23, 1999, the Office hearing representative affirmed the April 13, 1999 decision on the grounds that the medical evidence of record was insufficient to establish that appellant sustained a hearing loss causally related to his federal employment.

The Board finds that appellant's hearing loss is not causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.<sup>2</sup> Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>3</sup>

In an occupational disease claim, it must be established that a condition was sustained in the performance of duty by submitting 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.<sup>4</sup> The medical evidence required to establish a causal relationship between the occupational disease or condition and the identified employment factors is, generally, rationalized medical opinion evidence.<sup>5</sup> The opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the relationship between the diagnosed condition and the employment factors identified by the claimant.<sup>6</sup>

In this case, the Office did not dispute that appellant sustained a hearing loss, however, it appropriately found that the medical evidence of record fails to establish that it is causally related to his federal employment. Dr. Johnson's report carries the weight of the medical evidence

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *Thomas L. Hogan* 47 ECAB 323, 329 (1996).

because it is well rationalized and addresses the issue of whether appellant's hearing loss was causally related to his employment. In his report, Dr. Johnson found that appellant sustained a right-sided low frequency sensorineural hearing loss and a very mild bilateral high frequency sensorineural hearing loss. He opined, however, that the intensity and duration of appellant's workplace noise exposure was insufficient to cause his hearing loss. Dr. Johnson also stated that appellant's unilateral, low and mid-frequency hearing loss was not the type of hearing loss expected to result from hazardous noise exposure. The Office medical adviser agreed with Dr. Johnson's rationale in his October 19, 1998 report.

The remaining medical evidence of record is insufficient to establish a causal relationship between appellant's hearing loss and factors of his federal employment. In his August 20, 1998 report, Dr. Siddoway opined that appellant's hearing loss was not related to his June 19, 1996 uvulopalatopharyngoplasty surgery, however, he did not render an opinion on the issue of whether it was related to his employment. Mr. Moghaddam's September 8, 1998 letter lacks probative value because he is not a "physician" under the Act and, therefore, may not render a medical opinion.<sup>7</sup> Mr. Neilson's undated audiogram did not contain a physician's opinion on causal relationship and, therefore, also lacks probative value.

The decisions of the Office of Workers' Compensation Programs dated November 22 and April 13, 1999 are hereby affirmed.

Dated, Washington, DC  
June 1, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> Section 8101(2) defines "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. *Sheila G. Peckenschneider*, 49 ECAB 430 (1998).