

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER T. LINDSAY and DEPARTMENT OF THE AIR FORCE,
AIRBORNE ELECTRONICS DIVISION, ROBINS AIR FORCE BASE, GA

*Docket No. 00-2261; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a ratable hearing loss in his right ear; and (2) whether appellant's hearing loss in his left ear was causally related to factors of his employment.

On May 19, 1972 appellant, then a 32-year-old electronic mechanic, filed an occupational disease claim alleging that he sustained a hearing loss in his left ear, which he attributed to hazardous noise exposure.

In a report dated July 19, 1976, Dr. Emil Romitan stated that appellant was seen for severe hearing loss and micropurulent discharge in the left ear. He related a history of pain and dizziness and a feeling of fullness in the left ear for several months' duration. Dr. Romitan diagnosed secretory otitis media (inflammation of the middle ear) of the left ear and severe hearing loss.

On July 20, 1976 Dr. Romitan performed a tympanotomy and exploration of the left middle ear, which revealed high viscosity effusion.

In a report dated December 21, 1976, Dr. W.A. Spears stated that appellant had a sudden loss of hearing in his left ear on June 12, 1976. He related that there was a perforation of the tympanic membrane, which was surgically repaired but the hearing loss continued.

In a report dated February 2, 1977, Dr. Spears stated that appellant's conductive defect in the left ear was possibly noise-induced but most likely due to an old viral infection. He stated that audiometric testing did not reveal a noise-induced hearing loss.

In a report dated May 18, 1977, Dr. Spears stated that audiometric testing revealed a bilateral sensorineural hearing loss, which was noise induced with a superimposed conductive hearing loss of the left ear. He stated that the noise-induced portion of the hearing loss was job related.

In a report dated January 5, 1979, Dr. John S. Turner, an otolaryngologist, related that in July 1976 while appellant was working near a person using an air hose, his ear began to feel peculiar on the left and he began losing his hearing with a vague sensation of unsteadiness. A hole in appellant's eardrum had been repaired but hearing had not improved. He stated that appellant had a total loss of hearing in the left ear consistent with, but not diagnostic of, exposure to an industrial noise such as an air hose. Dr. Turner provided the results of audiometric testing on January 3, 1979.

In a report dated December 12, 1979, an Office of Workers' Compensation Programs medical adviser determined, based on audiometric testing performed on January 3, 1979,¹ that appellant had no ratable hearing loss in the right ear. He opined that, the hearing loss in appellant's left ear was caused by the broken eardrum rather than occupational noise exposure.

By decision dated February 29, 1980, the Office denied appellant's claim on the grounds that the evidence of record did not establish that appellant's hearing loss was causally related to his employment.

By letter dated September 26, 1980, the Office set aside the February 29, 1980 decision. The Office accepted that appellant's noise-induced sensorineural hearing loss in the right ear was job related, but was not severe enough to be compensable. The Office found that the conductive hearing loss of the left ear was not causally related to factors of appellant's employment.

By decision dated December 24, 1980, the Office denied appellant's request for reconsideration.

By decision dated August 18, 1981, an Office hearing representative affirmed the Office's February 29, 1980 decision.

By decision dated October 16, 1985, the Office denied modification of its February 29, 1980 decision.

By letter dated December 1, 1999, appellant requested reconsideration.

By decision dated April 11, 2000, the Office denied appellant's request for reconsideration.

By letter dated July 28, 2000, appellant requested reconsideration and submitted additional evidence.

In a report dated September 19, 1977, Dr. Turner stated that, appellant had severe sensorineural hearing loss in the left ear, "cause undetermined." In a report dated September 27, 1977, he stated that all of appellant's x-rays and laboratory studies were normal. He concluded that appellant had some type of virus infection in his left ear or perhaps one of the blood vessels in his left ear closed off the circulation and caused permanent deafness in the left ear.

¹ The Office medical adviser indicated that audiometric studies in May 1977 were not performed correctly and, therefore, were not reliable.

By decision dated August 21, 2000, the Office denied modification of its October 16, 1985 decision on the grounds that the evidence submitted was insufficient to establish that appellant's hearing loss in his left ear was causally related to factors of his employment.

The Board finds that appellant failed to establish that he sustained a ratable hearing loss in his right ear.

The schedule award provisions of the Federal Employees' Compensation Act,² set forth the number of weeks of compensation to be paid for permanent loss of the members of the body listed in the schedule. The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination rests in the sound discretion of the Office.³ However, for consistent results and to ensure equal justice to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁴

The Office evaluates industrial 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 cycles per second (cps). The losses at each frequency are added and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.⁵ The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.⁶

In this case, the 1979 audiogram showed decibel losses of 0, 5, 5 and 30 for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps second for a total loss of 40 decibels. Dividing the total of 40 by 4 equals a 10 decibel average hearing loss and reducing this 10 average loss by the "fence" of 25 decibels and multiplying by 1.5 equals a 0 percent hearing loss in the right ear according to the Office's standard procedures for determining hearing loss. In order to be a compensable loss under the Act, the hearing loss in either ear must exceed an average of 25 decibels.⁷ Therefore, appellant is not entitled to compensation for hearing impairment for the right ear under section 8107 of the Act.

² 5 U.S.C. §§ 8101-8193.; see § 8107.

³ See *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ See *Henry L. King*, 25 ECAB 39, 44 (1973).

⁵ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ See *Danniel C. Goings*, *supra* note 5.

⁷ See *Royce L. Chute*, 36 ECAB 202, 206 (1984).

The Board further finds that appellant has failed to establish that the hearing loss in his left ear was causally related to factors of his employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.⁸ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁹ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹⁰ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.¹¹ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹²

In a report dated July 19, 1976, Dr. Romitan diagnosed secretory otitis media and severe hearing loss, but did not opine that the hearing loss in the left ear was caused by appellant's employment. Similarly, Dr. Spears stated that appellant had a sudden loss of hearing in his left ear on June 12, 1976 did not opine as to the cause of the hearing loss in the left ear.

In a report dated February 2, 1977, Dr. Spears stated that appellant continued to have a conductive defect in the left ear which was most likely due to an old viral infection. He stated that audiometric testing did not permit the diagnosis of noise-induced hearing loss. Thus, this report does not establish that the left ear hearing loss was employment related.

In 1979, Dr. Turner stated that appellant had a total loss of hearing in the left ear consistent with, but not diagnostic of, exposure to an industrial noise such as an air hose close to the ear. However, he did not discuss whether appellant's hearing loss could have been caused by the broken eardrum and infection of the middle ear. Therefore, his report is not sufficient to establish an employment-related hearing loss in the left ear.

In a report dated December 12, 1979, an Office medical adviser stated that the hearing loss in appellant's left ear was caused by the broken eardrum rather than occupational noise exposure.

In a report dated January 4, 1985, Dr. Warren L. Griffin, an otolaryngologist, stated that appellant had been seen on several occasions for severe hearing loss in the left ear and vertigo. However, he did not opine as to the cause of the hearing loss.

⁸ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

¹⁰ See *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

¹¹ See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

¹² See *Joseph T. Gulla*, *supra* note 10.

In September 1977, Dr. Turner stated that appellant had severe sensorineural hearing loss in the left ear, "cause undetermined." He added that all of appellant's x-rays and laboratory studies were normal, leaving the conclusion that he had some type of virus infection in his left ear or perhaps one of the blood vessels in his left ear closed off the circulation and caused permanent deafness in the left ear. Because Dr. Turner was not able to opine that the hearing loss was caused by appellant's employment, his report does not meet appellant's burden of proof to establish that his hearing loss in his left ear was causally related to factors of his employment.

In summary, there is no rationalized medical evidence establishing that appellant's hearing loss in his left ear was causally related to factors of his employment. The medical evidence of record suggests that the cause of the hearing loss in the left ear was a broken eardrum and infection of the middle ear. Therefore, the Office properly denied appellant's claim for hearing loss in the left ear.

The August 21 and April 11, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 13, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member