

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EVE H. IVERSON and FEDERAL EMERGENCY  
MANAGEMENT AGENCY, Redwood City, CA

*Docket No. 00-1649; Submitted on the Record;  
Issued May 2, 2001*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on the grounds that her employment-related hearing loss had resolved; (2) whether appellant met her burden of proof to establish that she had any employment-related hearing loss after March 10, 1998; and (3) whether the Office properly denied appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized November 9, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative that appellant's employment-related hearing loss resolved no later than March 10, 1998.

On April 11, 1994 appellant, then a 37-year-old telephone operator, filed a claim for a hearing loss related to the use of headphones. The Office accepted her claim for bilateral hearing loss and paid appropriate compensation benefits. By decision dated March 10, 1998, the Office terminated appellant's compensation benefits on the grounds that her employment-related hearing loss had resolved. By decision dated November 9, 1998, the Office affirmed the March 10, 1998 decision.

By letter dated February 3, 1999, appellant requested reconsideration.

By decision dated March 18, 1999, the Office denied appellant's request for reconsideration.

By letter dated October 31, 1999, appellant requested reconsideration and submitted additional evidence.

In clinical notes dated September 22, 1999, Dr. Edward J. Callan, an otolaryngologist, stated that appellant's pattern of hearing loss was not consistent with exposure to noise. Dr. Callan stated his opinion that appellant had a mild to moderate hearing loss, but did not discuss the cause of the hearing loss.

By decision dated January 6, 2000, the Office denied modification of its November 9, 1998 decision.

By letter dated March 9, 2000, appellant requested reconsideration and submitted a copy of an audiogram based on testing done on November 26, 1997 and notes from an audiologist.

By decision dated March 21, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and not sufficient to warrant further merit review.

The Board finds that appellant failed to meet her burden of proof to establish that she had any employment-related hearing loss after March 10, 1998, the date the Office terminated her compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>1</sup>

Given that the Board has found that the Office met its burden of proof in terminating appellant's compensation effective March 10, 1998, the burden shifts to appellant to establish that she is entitled to compensation after that date. After termination or modification of compensation, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant. Appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation.<sup>2</sup>

The Board has reviewed the additional evidence submitted by appellant and finds that it is not sufficiently probative to establish that appellant had residuals of her employment injury after March 10, 1998.

Dr. Callan stated that appellant's pattern of hearing loss was not consistent with exposure to noise, but did not opine that her loss was related to any work factors. In an undated report received by the Office on November 9, 1998, Dr. Callan stated his opinion that, appellant had a mild to moderate hearing loss, but he did not discuss the cause of the hearing loss. Therefore, this evidence does not establish that appellant had any continuing hearing loss after March 10, 1998 due to factors of her employment.

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<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

<sup>2</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

The Board further finds that the Office was within its discretion in denying appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

In support of her request for reconsideration, appellant submitted a copy of an audiogram based on testing done on November 26, 1997 and notes from an audiologist. However, an audiologist is not a physician under the Federal Employees' Compensation Act.<sup>5</sup> Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.<sup>6</sup> Consequently, this evidence is of no probative value and is not sufficient to warrant further merit review. The Office, therefore, acted within its discretion in denying appellant's request for reconsideration.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Arnold A. Alley*, 44 ECAB 912, 921 (1992). As defined by the Act in 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

The March 21 and January 6, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
May 2, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member