U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEAN W. HOLMES and U.S. POSTAL SERVICE,
POST OFFICE, Pacific Palisades, CA

Docket No. 00-2032; Submitted on the Record;
Issued May 2, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a hearing loss causally related to noise exposure in his federal employment.

On January 6, 1998 appellant, then a retired 63-year-old city carrier, filed a claim for a hearing loss that he attributed to driving a loud postal jeep for 22 years. In a statement dated January 6, 1998, appellant also attributed his hearing loss to 11 years of working directly behind sorting machines with level of noise usually high at times.

Appellant submitted a report dated January 6, 1998 from Dr. Randal C. Franke, who is Board-certified in preventive medicine, accompanied by an audiogram of the same date. He concluded that appellant had a bilateral severe hearing loss that, on a more probable than not basis, was related to noise exposure in his employment.

In a statement dated May 8, 1998, appellant's supervisor noted that there had never been sorting machines at the employing establishment at which appellant worked and that the only machine at that facility was a canceling machine. The employing establishment provided noise level surveys done on a canceling machine of the type once used there, which showed levels of 65.1 to 65.9 decibels while the machine was running. The employing establishment also provided noise level surveys of vehicles of the type used by appellant, which showed levels of 63.1 to 86.4 decibels while driving on city streets.

On June 3, 1998 the Office of Workers' Compensation Programs referred appellant, a statement of accepted facts and the employing establishment's noise level surveys to Dr. William Ritchie, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated June 24, 1998, accompanied by an audiogram of the same date, Dr. Ritchie concluded:

> "[Appellant] has a bilateral, sensorineural hearing loss. Although the type is compatible with noise exposure, the configuration is not typical. [Appellant] describes exposure to high levels of noise, but the file does not document levels

that would be high enough to be considered hazardous, let alone injurious. On a more probable than not medical basis, the hearing loss is not due to occupational noise exposure."

By decision dated August 12, 1998, the Office found that appellant had not established that his hearing loss was causally related to his federal employment.

Appellant requested a hearing and submitted additional reports from Dr. Franke, who reviewed Dr. Ritchie's report and the employing establishment's noise surveys. He stated that this evidence did not dispute his original conclusion that appellant's hearing loss was due to noise exposure. Dr. Franke opined that the employing establishment's surveys could not duplicate the noise levels to which appellant was exposed and that "most useful in assessing noise exposure at the time of employment was appellant's recollection of a need for himself and coworkers to raise their voices to be heard."

Appellant also submitted a report from an industrial hygienist, who disputed the results of the employing establishment's surveys and stated that appellant's "hearing loss must … have been caused by occupational noise exposure."

At a hearing on August 24, 1999 appellant testified that the employing establishment had sorting machines that were taken out in the 1970s and that he was exposed to loud noise during a remodeling of the employing establishment. An employing establishment's injury compensation specialist commented on appellant's testimony at the hearing, stating that sorting machines were only present at general mail facilities.

By decision dated November 16, 1999, an Office hearing representative found that there was an unresolved conflict of medical opinion on the issue of whether appellant's hearing loss was causally related to noise exposure in his employment. To resolve this conflict, the Office referred appellant, a statement of accepted facts and the case record to Dr. Charles Caplan, a Board-certified otolaryngologist.

In a report dated March 26, 2000, accompanied by an audiogram of March 13, 2000, Dr. Caplan, after setting forth appellant's history and the results of testing of his hearing, concluded:

"There are two issues: First, whether or not [appellant] was exposed to a level of noise which would have damaged his hearing and second, whether or not the audiogram is consistent with damage due to noise. My conclusions are negative on both issues.

"What is important with regard to noise exposure is not simply the level of loudness, but also the duration of exposure. It is generally accepted that: A level of 85 decibels TWA (time-weighted average), for eight hours per day, if continued for long enough can cause damage. Exposures equivalent to less than that are unlikely to cause damage. Persons with normal hearing will need to raise their voices to converse if the ambient noise is about 75 decibels.

"In the case of the Jeeps, one tested at 86.4 decibels peak loudness. If he had driven that Jeep uninterruptedly at full throttle, the TWA loudness might have been above 85 decibels. Driving the Jeep in the stop-and-go fashion he described would have had TWA loudness well below that level. It is in dispute whether there were 'sorting machines' in his workplace. Even if there were machines producing as much as 95 decibels, which is a level typical of factory noise, the exposure times of 1 to 2 hours daily (statement of accepted facts) would have given him TWA exposure equivalent to less than 85 decibels for eight hours. It is also unlikely that adding exposure to typical remodeling noise for part of the day during the six-month period he described would have yielded the equivalent of 85 decibels TWA for eight hours. Even if it had, six months' duration of exposure to a marginally hazardous noise level would not have resulted in measurable change in his thresholds.

"[Appellant's] audiograms show thresholds which are poor in the low frequencies and which have relatively flat curves from 1 to 8 kHz [kilohertz]. A notch at 3, 4 or 6 kHz, which is typical of noise damage, is absent. The audiometric pattern of his hearing loss is not compatible with causation by noise damage, even including an average amount of aging change.

"[Appellant] has progressive binaural sensorineural hearing loss, unrelated to his employment. The etiology of his hearing loss is not apparent, but for the reasons stated above it is incompatible with causation by noise."

By decision dated April 24, 2000, the Office found that the weight of the medical evidence rested with the report of Dr. Caplan.

The Board finds that the weight of the evidence establishes that appellant did not sustain a hearing loss due to his noise exposure in his federal employment.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[1]

In this case, there was a conflict of medical opinion between appellant's attending physician, Dr. Franke, and the Office's referral physician, Dr. Ritchie, on whether appellant's hearing loss was causally related to his federal employment.[2] To resolve this conflict, the Office,

[1] *James P. Roberts*, 31 ECAB 1010 (1980).

[2] The opinion of the industrial hygienist submitted by appellant does not constitute competent medical evidence to support causal relationship, because an industrial hygienist is not a "physician" as defined by 5 U.S.C. § 8101(2).

pursuant to section 8123(a) of the Federal Employees' Compensation Act,[3] referred appellant to Dr. Caplan, a Board-certified otolaryngologist.

In a report dated March 26, 2000, Dr. Caplan concluded that appellant's bilateral sensorineural hearing loss was unrelated to his employment. Dr. Caplan provided rationale for this conclusion, explaining that appellant was not exposed to a level of noise, which would have damaged his hearing and that audiometric pattern of his hearing loss was not compatible with causation by noise damage. His report was based on a proper factual background and was rationalized. Therefore, it is entitled to special weight and constitutes the weight of the medical evidence in this case.

The April 24, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 2, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

[3] 5 U.S.C. § 8123(a) states in pertinent part "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."