

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN M. SCHNUCK and TENNESSEE VALLEY AUTHORITY,  
SHAWNEE FOSSIL PLANT, West Paducah, KY

*Docket No. 02-855; Submitted on the Record;  
Issued August 23, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant's hearing loss is causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds that the case is not in posture for decision.

On June 15, 2001 appellant, then a 49-year-old maintenance mechanic/boilermaker, filed a claim alleging a hearing loss caused by exposure to hazardous noise levels in the course of his federal employment. Appellant stated that he first became aware of his hearing loss and related it to his federal employment in 1978. The employing establishment stated that appellant is still working and still exposed to the conditions alleged to have caused his hearing loss.

Accompanying the claim were employing establishment audiograms covering the period 1970 to 2000, revealing a high-frequency hearing loss in the left ear as early as 1970 progressively worsening and in the right ear as early as 1993 progressively worsening. Subsequently, submitted to the record was appellant's employment history from 1970 to the present.

The Office of Workers' Compensation Programs referred appellant to Dr. Phillip Klapper, a Board-certified otolaryngologist, for examination and determination of the extent of any noise-induced hearing loss. The Office provided a statement of accepted facts which included a statement that appellant was not exposed to noise in his military service, nonfederal civilian service nor in his hobbies. The doctor was advised that he must use the statement as the only factual framework for his opinion. On a form report, CA-1332, it was stated that if there is any variance in the history of exposure as stated on the statement of accepted facts and the history given by appellant to the doctor it should be carefully considered and commented upon, but the opinion rendered must be based solely on the statement of accepted facts. Also provided were employing establishment audiograms covering 1978 to 2001.

On a November 14, 2001 Form CA-1332, Dr. Klapper stated that the history of noise exposure as stated on the statement of accepted facts and that given to him by appellant varied significantly. He stated that until 1996 appellant was exposed to gunfire while hunting at least 100 times with no ear protection, Dr. Klapper attributed appellant's hearing loss to exposure to gunfire, and stated that "Evidence of unilateral high frequency hearing loss present in 1978 which has progressed with further exposure to gunfire."<sup>1</sup> Dr. Klapper stated that appellant's exposure to noise in the workplace was not sufficient in intensity and duration to have caused appellant's hearing loss.

By decision dated December 11, 2001, the Office denied appellant's claim, finding that the evidence of record was insufficient to establish a causal relationship between appellant's hearing loss and factors of his employment.<sup>2</sup>

The record does not contain any documents, such as noise level surveys, from the employing establishment detailing appellant's exposure to noise at work.

There is no narrative report or office notes from Dr. Klapper. On the November 14, 2001 form report, Dr. Klapper did not discuss what evidence he relied on to determine that appellant's exposure to noise in his federal employment was not sufficient in intensity and duration to have caused appellant's hearing loss. As Dr. Klapper's report is based on an inaccurate factual background, it is of little probative value.<sup>3</sup>

For the reasons stated above, the case must be remanded to the Office for further development.

On remand, the Office should advise appellant of the evidence needed to support his claim and request details concerning his exposure to gunfire. The Office should also request information from the employing establishment regarding noise levels to which appellant was exposed and the frequency of the exposure. After which, appellant should be referred back to Dr. Klapper, along with a new statement of accepted facts and the medical records for a new examination and opinion on the cause of appellant's hearing loss. After such further development as deemed necessary the Office shall issue a *de novo* decision.

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<sup>1</sup> Dr. Klapper noted a unilateral (left ear) high-frequency hearing loss as early as 1978. The Board notes that later audiograms show that appellant's right ear has progressively worsened in the high frequencies.

<sup>2</sup> Although the Office in its December 11, 2001 decision stated that by letter dated October 17, 2001, appellant was given an opportunity to submit evidence to support his claim and that the evidence received was not sufficient to establish his claim, the Board notes that the record does not contain any request by the Office for detailed factual or medical evidence from appellant or that any evidence was received from appellant after October 17, 2001. Section 10.121 of the Code of Federal Regulations provides: "If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof." Also there is no evidence that the Office requested factual evidence from the employing establishment to document the intensity and duration of appellant's exposure to noise in the workplace.

<sup>3</sup> A report must be based on a complete and accurate factual and medical background; *see Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon* 11 ECAB 384 (1960).

The decision dated December 11, 2001 of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC  
August 23, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member