U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. RAUCH and DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION, Bismarck, ND

Docket No. 02-1050; Submitted on the Record;
Issued December 5, 2002

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for hearing aids.

On January 1, 2002 appellant, then a 55-year-old meter and relay craftsperson, filed an occupational disease and claim compensation, Form CA-2, alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he became aware of his illness and that it was caused or aggravated by his employment on December 15, 2000. On the reverse of the form, appellant's supervisor noted that appellant first reported his condition to him on January 2, 2001. He noted that appellant was last exposed to the conditions alleged to have caused his disease or illness on July 14, 1991 because he "changed duties which removed most of the danger." Appellant's supervisor also submitted an employment history, noise exposure data, reports from Dr. Michael A. Berg with MeritCare Clinic, otolaryngology, audiological evaluations and career care hearing test results.

In Dr. Berg's report dated December 26, 2000, he indicated that appellant's November 20, 2000 audiological evaluation revealed a bilateral mid and high frequency sensorineural hearing loss slightly worse on the right. He noted that he believed appellant would benefit greatly from the use of hearing aids.

By letter dated August 28, 2001, the Office referred appellant, the case record and a statement of accepted facts to Dr. Ferdinand LaVenuta, a Board-certified otolaryngologist, for an otologic evaluation and audiometric testing.

On September 20, 2001 Dr. LaVenuta performed an otologic evaluation and Cari Movchan, a clinical audiologist, on the doctor's behalf, conducted an audiometric test. Testing was done at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second. Ms. Movchan noted that appellant's audiological evaluation revealed a high frequency noise-induced, sensorineural hearing loss, bilaterally. The decibel sum of hearing threshold levels revealed

values of 18.8 percent in the right ear and 18.8 percent in the left ear, interpreted as 18.8 percent total binaural hearing impairment or 6 percent whole body impairment. Appellant's speech discrimination was 96 percent in the right ear and 88 percent in the left ear. The audiogram results noted a calibration date of October 11, 2001.[1] Dr. Venuta diagnosed appellant with bilateral noise-induced sensorineural hearing loss. He noted in his opinion that appellant's condition was "due" to his federal employment. He recommended hearing protection/hearing aid trial.

In a report dated October 28, 2001, an Office medical adviser reviewed the medical evidence of record. Applying the Office's standardized guidelines to the August 28, 2001 findings, the medical adviser determined that appellant did have a binaural sensorineural hearing loss caused or aggravated by exposure to his federal employment. He noted that no aural rehabilitation or recommended examination by a specialist was authorized.

By decision dated December 21, 2001, the Office accepted appellant's claim for a hearing loss but denied authorization for the payment of hearing aids. The Office stated:

> "The weight of medical evidence in your file establishes that you would not benefit from hearing aids or any additional treatment/medical services."

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part "the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation."[2] The Office must, therefore, exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.

In its denial of authorization for hearing aids, the Office made no reference to Dr. Venuta's report recommending that appellant have a trial use of hearing aids[3] and did not seek any results, nor did the Office make reference to Dr. Berg's December 15, 2000 report, in which he noted that he strongly believed that appellant would benefit from using hearing aids. It

[1] The Board notes the probability that this date is incorrect as it indicates that the audiogram equipment was calibrated after appellant's testing.

[2] 5 U.S.C. § 8103(a).

[3] The Office's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends. Trial or rental periods should be encouraged as many persons do not find their use satisfactory. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400(d)(2) (October 1995).

is well established that proceedings under the Act[4] are not adversarial in nature[5] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[6] The Office has an obligation to see that justice is done.[7]

The unaddressed evidence of record reveals that appellant may require hearing aids. While the medical reports lack sufficient medical rationale, they are sufficient to require further development of the medical evidence.[8]

The Board will set aside the Office's December 21, 2001 decision and remand the case for further development of the evidence. The Office shall then properly exercise its discretion and issue an appropriate final decision of appellant's request for hearing aids.

The December 21, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.[9]

Dated, Washington, DC
December 5, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] 5 U.S.C. §§ 8101-8193.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[7] *William J. Cantrell*, 34 ECAB 1233 (1983).

[8] *Horrace Langhorne*, 29 ECAB 820 (1978).

[9] The Board notes that pages 3 and 4 of appellant's case record were inadvertently entered into the record and are of no relevance to appellant's claim.