

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. PIETRO and U.S. POSTAL SERVICE,
POST OFFICE, Ft. Lauderdale, FL

*Docket No. 01-1347; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

This case has been before the Board on appeal. In a September 21, 2000 decision, the Board found that the decibel range of the public announcement system at the employing establishment violated appellant's medical restrictions and constituted a compensable factor of employment. The Board, however, found that appellant failed to submit rationalized medical evidence establishing that his emotional condition was caused by the accepted compensable factor of employment. Accordingly, the Board found that appellant failed to establish that he sustained an emotional condition in the performance of duty. The facts of the case are set out in that decision.¹

In a November 2, 2000 letter, appellant requested that the Office of Workers' Compensation Programs reconsider the Board's decision. By decision dated March 29, 2001, the Office denied appellant's request for modification after a merit review. The Office found that appellant failed to submit rationalized medical evidence sufficient to establish that his emotional condition was caused by the accepted employment factor, *i.e.*, exposure to loud noise.

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

The Board has found that appellant established a compensable factor of employment, *i.e.*, that the decibel range of the public announcement system at the employing establishment violated appellant's medical restrictions. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Federal Employees' Compensation Act. To establish his occupational

¹ See Docket No. 99-2166 (issued September 21, 2000).

disease claim for an emotional condition, appellant must also present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

Appellant submitted an October 17, 2000 report of Dr. Waden E. Emery, a Board-certified psychiatrist. Dr. Emery indicated that appellant had a noise-induced hearing loss accompanied by disabling tinnitus, which is incurable. He stated:

“It is often the case that the secondary effects of tinnitus create the disabling characteristics of the patient. [Appellant’s] history includes severe sleep disorder, anxiety, three failed marriages, loss of jobs, severe depression, violent behavior (fight or flight syndrome), severe headaches, social isolation, hypersensitivity to noise and suicidal ideation. All these secondary effects of tinnitus are due to the distressing perception of tinnitus described sometimes as a ‘siren,’ such as this patient’s description of the unrelenting, screaming, persistent noise. Imagine for a moment an unrelenting intrusive school fire alarm that cannot be shut off and that is this patient’s life, or absence of life. It is overwhelmingly intrusive enough to directly cause severe psychiatric and psychological effects, one being anxiety.... Psychological and psychosomatic factors such as tension headaches, muscle tension, sleep disturbances, irritability, anxiety and depression are all known to be related to tinnitus....”

Dr. Emery noted that tinnitus is the experience of hearing sound from the ears or head where no external sound source is present. He stated that appellant’s hypersensitivity to noise and the employing establishment’s public announcement system exposed him to excessive levels that might have been acceptable to the Occupational Safety and Health Administration, but not safe for appellant and thus appellant’s exposure was causally related to his psychological predisposition to anxiety and stress, secondary effects of tinnitus.

Dr. Emery opined:

“[Appellant’s] exposure to loud noise was a negative reinforcement directly increasing his tinnitus perception which, in turn, caused an acute anxiety disorder. The stress from this alone violated Dr. Morales’ (a contracted [employing establishment] doctor of psychiatry) order for work restriction of ‘no stress’ for [appellant] at the [employing establishment]. [Appellant], via his tinnitus condition, is ‘predisposed to stress.’ [The employing establishment] violated this medical restriction and others (no change of tour). Therefore, loud noises and abusive actions clearly violated [appellant’s] medical restriction of ‘no stress.’”

² *Bruce E. Martin*, 35 ECAB 1090 (1984).

Further, Dr. Emery opined:

“[Appellant’s] exposure involving loud noise at his place of employment was categorically causally related to his acute anxiety disorder. It is an example in his work environment as well as the reported derogatory sign, attempts by [the employing establishment] to disregard [appellant’s] medical restrictions including ‘no stress,’ attempts by [the employing establishment] to send [appellant] back to a noisier tour (prearbitration order) which contradicted an Equal Employment Opportunity Commission accord for a less noisy area and the absence of the [employing establishment’s] usual procedure of issuing a follow-up order to void paper prearbitration order. These examples of negative reinforcement and reported other abusive harassing discrimination attempts contributed to compounding the psychological effects on [appellant’s] condition of tinnitus, thereby continuing the ‘vicious cycle’ of tinnitus.”

He stated:

“In summary, loud noise produced a significant increase in the perception of tinnitus that, in turn, produced stress which, in turn, produced all the secondary effects of tinnitus, one being acute anxiety producing, again, increased perception of tinnitus. Thus, the ‘vicious cycle’ effect. There was no possibility of coping or habituation occurring.”

Dr. Emery concluded, “It is my medical opinion that the loud public announcement system noise was directly and causally related to [appellant’s] acute anxiety disorder.”

Appellant submitted an October 27, 2000 report of Dr. Laurence Miller, Ph.D., a clinical psychologist, who agreed with Dr. Emery’s conclusions. He stated that appellant suffered from post-traumatic stress disorder and dysthymia resulting from a combination of tinnitus and the hypersensitization produced by appellant’s experience of derogatory abuse at the employing establishment. Dr. Miller, however, failed to specifically identify the derogatory abuse that appellant suffered at the employing establishment. Thus, his report is insufficient to establish appellant’s burden.

The Board notes that, while Dr. Emery’s report is not completely rationalized, it finds that appellant’s emotional condition was caused by the accepted factor of employment, exposure to loud noise and not contradicted by any substantial medical evidence of record. Dr. Emery’s report, however, also addressed other aspects of the claim, including harassment and discrimination, which the Board noted were not substantiated as it pertains to his 1998 claim. While the report is not sufficient to satisfy appellant’s burden of proof, it raises an uncontroverted inference of causal relationship between appellant’s emotional condition and a compensable factor of his employment and is sufficient to require further development of the case record by the Office.³

³ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

On remand, the Office should refer appellant, the case record and a new statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's emotional condition was caused by his exposure to loud noise at the employing establishment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The March 29, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further proceedings consistent with this decision.

Dated, Washington, DC
January 25, 2002

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member