U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY J. SVEC and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, TX

Docket No. 01-1655; Submitted on the Record;
Issued May 15, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, DAVID S. GERSON

The issues are: (1) whether appellant is entitled to hearing aids; and (2) whether the Office of Workers' Compensation Programs properly denied his request for an oral hearing.

On June 20, 1997 appellant, then a 47-year-old program manager, filed an occupational disease claim alleging that he sustained permanent hearing loss, for which he attributed to factors of his employment. He stated that he first became aware of his condition and realized that it was caused or aggravated by his employment on April 2, 1983. The employing establishment indicated that appellant had changed jobs to his present nonindustrial position. He supplied a statement outlining his duties as a pneudraulic system mechanic on aircraft; an electronic mechanic working on C-5, B-52 and F-11 aircraft, turbine compressors and generators; and aircraft preflight areas with exposure to the aircraft engines.

Accompanying the claim, appellant and the employing establishment submitted personnel records and audiological test results dating from March 22, 1978 to March 25, 1985.

By letter dated October 29, 1997, the Office accepted appellant's claim for binaural hearing loss and advised him that hearing amplification devices were authorized.

In an August 24, 1998 decision, the Office advised appellant that his claim was accepted for hearing loss due to employment-related noise exposure; however, his hearing loss was not severe enough to be considered ratable. The Office advised him that he was not entitled to a schedule award of compensation. Appellant was further advised to contact the Office for further information regarding hearing aids.

By letter dated September 1, 1998, appellant requested an oral hearing and supplied additional evidence.

In a March 6, 1998 report, Rebecca Enke, MS, CCC-A, an audiologist, stated that appellant had severe high frequency sensorineural hearing loss bilaterally. She advised that the

two-minicanal CSP-II-P hearing aids would cost $4,600.00 dollars and batteries for a year would cost $120.00.

In an October 27, 1998 decision, the hearing representative found that the case was not in posture for a hearing. The hearing representative found that the District medical adviser requested rationale from Dr. Anthony Sertich, a Board-certified otolaryngologist, with respect to his recommendation for hearing aids when he had a zero percent hearing loss. The Office rendered a decision stating appellant's hearing loss was not severe enough to warrant a schedule award without clarifying the recommendation for hearing aids. The hearing representative also noted that appellant's audiological report of March 6, 1998, which found severe high frequency hearing loss. He advised that further medical inquiry was warranted to clarify the situation and recommendations in the Office medical adviser's May 12, 1998 recommendation and a new schedule award decision should be issued. He set aside the August 24, 1998 decision and remanded the case for further development.

On December 16, 1998 the Office requested that Dr. Sertich explain his rationale for recommending hearing aids after assessing a zero percent hearing loss. The Office also requested that he sign the attached audiometric testing form.

The Office did not receive a response from Dr. Sertich and subsequently referred appellant to Dr. Gerald Laursen, a Board-certified otolaryngologist.

In a May 23, 1999 report, Dr. Laursen indicated that appellant had slight high frequency sensorineural loss and that it was not due to his federal employment. He further noted that hearing aids were not recommended.[1]

In a September 17, 1999 report, the Office medical adviser noted that he had reviewed the record and Dr. Laursen's reports. He found that appellant had a six percent monaural hearing loss in the right ear and noise exposure on the job was deemed a significant factor to contribute to appellant's hearing loss. Other than checking "no" in reference to hearing aid authorized, Dr. Laursen did not address the need for hearing aids.

By decision dated September 27, 1999, the Office found that appellant had a six percent binaural hearing loss. The Office corrected the decision on October 21, 1999 to reflect a six percent monaural hearing loss in the right ear.

On November 3, 1999 appellant filed an appeal to the Branch of Hearings and Review.

By letter dated May 1, 2000, appellant was advised that a preliminary review was conducted and his case was not in posture for a hearing. The hearing representative advised, in an April 28, 2000 decision, that the case was remanded for the Office to write to Dr. Laursen and request that he submit a supplemental report containing his opinion with supporting medical reasons, on the issue of whether hearing aids were warranted for claimant's hearing loss. The

[1] His signature is not on the page regarding a recommendation for hearing aids.

Office was instructed to issue a *de novo* decision, which addressed both the claimant's entitlement to a schedule award to compensation and the issue of authorization of hearing aids.

By letter dated August 31, 2000, the Office requested additional information from Dr. Laursen with respect to clarifying the need for hearing aids. He was advised to provide his opinion with reasoning for the claimant's "not needing hearing aids."

On September 13, 2000 the Office received the letter it sent to Dr. Laursen on August 31, 2000. The words "not severe enough -- minimal amount to gain" were scribbled in the white area underneath the request for Dr. Laursen's opinion with reasoning for the claimant not needing hearing aids. This information was not signed or dated and it is unclear who filled out this information.

In a November 22, 2000 decision, the Office denied appellant's request for hearing aids and found that the weight of the medical evidence did not support the need for hearing aids.

On December 28, 2000 appellant requested an oral hearing.

By decision dated February 13, 2001, the Office found that appellant's request for an oral hearing was untimely filed. The Office noted that appellant's request was postmarked December 28, 2000, which was more than 30 days after the issuance of the Office's November 22, 2000 decision and that he was, therefore, not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that it could be addressed through the reconsideration process by submitting additional evidence.

The only decisions on appeal before the Board are the November 22, 2000 decision denying appellant's request for a hearing aid and the February 13, 2001 decision denying appellant's request for an oral hearing. The Board has no jurisdiction to review any prior decisions because they were issued more than one year before the current appeal was filed on June 11, 2001.[2]

The Board finds that the Office did not meet its burden of proof to terminate appellant's entitlement to hearing aids.

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 disability or aid in lessening the amount of the monthly compensation."[3]

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability

[2] 20 C.F.R. § 10.607(a).

[3] 5 U.S.C. § 8103(a).

or a condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability or condition has ceased or that it is no longer related to the employment.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.[5]

In this case, the Office accepted appellant's claim in 1998 for a nonratable hearing loss and approved hearing aids. The Office medical adviser found that appellant had a six percent monaural hearing loss in the right ear and indicated that noise exposure on the job was a significant factor to contribute to appellant's hearing loss. He checked no for hearing aids, but did not provide any explanation as to why appellant did not need them when the Office had previously approved the hearing aids.

The second opinion physician, Dr. Laursen, did not provide any medical rationale to explain why appellant would no longer be entitled to hearing aids. Instead, the Office received the original letter, which was mailed to his Office. On the letter from the Office, someone scribbled "not severe enough -- minimal amount to gain." The letter did not contain a date or a signature. The Board has held that any medical evidence which the Office relies upon to resolve an issue must be in writing and signed by a qualified physician.[6] The Board has also consistently held that unsigned medical reports are of no probative value.[7] The Board finds that this case was sent back to the Office on several occasions to answer the question of whether hearing aids were needed with sufficient medical rationale. However, no rationale was ever received. The Board finds that the Office improperly relied upon Dr. Laursen's and the Office medical adviser's reports and did not meet their burden of proof to terminate appellant's entitlement to hearing aids.

Based on this finding, the second issue on appeal is moot.

[4] *Wallace B. Page*, 46 ECAB 227, 229-30 (1994*); Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

[5] *Larry Warner*, 43 ECAB 1027, 1032 (1992*); see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[6] *James A. Long*, 40 ECAB 538 (1989); *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[7] *See Merton J. Sills*, 39 ECAB 572 (1988).

The November 22, 2000 decision of the Office of Workers' Compensation Programs is reversed. The February 13, 2001 decision is moot.

Dated, Washington, DC
May 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member