

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. BETRO and DEPARTMENT OF LABOR, OCCUPATIONAL
SAFETY & HEALTH ADMINISTRATION, Sacramento, CA

*Docket No. 02-903; Submitted on the Record;
Issued February 14, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant's otitis media was causally related to or aggravated by his federal employment.

This case was before the Board previously on appeal. In its July 2, 2001 decision, the Board remanded the case to the Office of Workers' Compensation Programs to refer appellant, along with a statement of accepted facts and his medical record, to a specialist to determine whether his otitis media was caused or aggravated by his employment.¹

By letter dated August 1, 2001, the Office referred appellant and a list of seven questions to Dr. Stuart Gherini, a Board-certified otolaryngologist. However, the Board notes that only one question referred to appellant's otitis media, and that question inquired as to whether appellant's cold or flu infection which caused otitis media was causally related to his employment. In an August 20, 2001 report, Dr. Gherini stated that appellant's left ear hearing loss was causally related to his employment. In a decision dated October 29, 2001, the Office accepted appellant's left ear hearing loss as a work-related injury.

The Board finds that the case is not in posture for decision.

The Board notes that Dr. Gherini's report was not responsive to the Board's July 2, 2001 remand order which sought to determine whether appellant's otitis media was causally related to or aggravated by his employment. Because the Office failed to ask specifically whether appellant's otitis media was caused or aggravated by his employment, its October 29, 2001 decision must be set aside and remanded for further development. Upon remand the Office will

¹ Docket No. 00-2564 (issued July 2, 2001). The Board stated: "On remand, the Office should prepare a statement of accepted facts and refer appellant, the statement of accepted facts and a copy of the medical record to an appropriate specialist for an examination of appellant and a rationalized medical opinion on whether appellant's otitis media was caused or aggravated by his federal employment. After such further development as it may seem necessary, the Office shall issue a *de novo* decision."

refer appellant, the case record and a statement of accepted facts to an appropriate consultant for a determination as to whether appellant's otitis media was caused or aggravated by his employment.

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

Dated, Washington, DC
February 14, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member