U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUIS M. VILLANUEVA and DEPARTMENT OF THE AIR FORCE, SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, TX

Docket No. 03-977; Submitted on the Record;
Issued July 1, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a hearing loss causally related to his federal employment.

Appellant, a 50-year-old sheet metal mechanic, filed a notice of occupational disease on October 6, 1999 alleging that he developed a loss of hearing due to employment-related noise exposure. He submitted his employing establishment's medical records including audiograms. On October 4, 2000 appellant requested a schedule award.

The Office of Workers' Compensation Programs undertook additional development of the medical evidence by referring him to several Board-certified otolaryngologists to determine the extent of any employment-related hearing loss. By decision dated December 20, 2000, the Office denied appellant's claim finding that he failed to establish that he sustained an injury in the performance of duty as alleged. The Office found that the audiograms submitted by the second opinion physicians were unreliable. Appellant requested a review of the written record by an Office hearing representive and by decision dated October 17, 2001, the hearing representative affirmed the Office's decision. The hearing representative found that appellant was distorting audio and clinical test results and essentially precluding the physicians from accurately assessing his true loss of hearing thereby diminishing the probative value of the medical evidence of record. Appellant requested reconsideration on October 23, 2002. By decision dated January 29, 2003, the Office reviewed appellant's claim on the merits, but declined to modify its prior decisions.

The Board finds that appellant has not established that his hearing loss is due to noise exposure in his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[1]

In order to establish an employment-related hearing loss, the Board requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results included both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist report must include: date and hour of examination, date and hour of the employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.[2] The physician should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.[3]

Appellant initially submitted no evidence which complied with the above standard and the Office referred appellant for a second opinion evaluation with Dr. Jesse Moss, Jr., a Board-certified otolaryngologist, on November 22, 1999. In a report dated December 13, 1999, Dr. Moss noted that appellant's physical examination was normal and that appellant spoke in a normal soft voice to him and other office employees. However, he found that the audiogram revealed a severe to profound hearing loss bilaterally. Dr. Moss stated: "This evaluation is inconsistent with my informal clinical conversation evaluation." He recommended a complete diagnostic hearing evaluation to insure that his results reflected appellant's true organic hearing loss.

The Office then referred appellant for a second opinion evaluation with Dr. Brian Perry on February 25, 2000. In a report dated March 21, 2000, Dr. Perry, a Board-certified otolaryngologist, examined appellant and found his physical examination to be normal. He stated: "An audiogram was performed on March 16, 2000, which demonstrated some major discrepancies. First and foremost, his air and bone curves did not correlate with one another,

[1] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[2] *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993). *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Reguirements for Medical Reports*, Chapter 3.600.8(a) September 1994)

[3] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.(a.)(3) (September 1994).

with the bone scores being worse than the air scores, which is obviously a contrived finding. Secondly his pure-tone average is much worse in both ears than is his SRT (speech reception threshold) in both ears…. This is highly abnormal and would never be found naturally." Dr. Perry performed an otoacoustic emission test and an auditory brain stem response (ABR) test and found that based on the combined results of these tests that appellant probably has normal hearing in the low tones with a down sloping hearing loss above 3,000 kilohertz in both ears. He concluded: "I believe there is a significant functional component in [appellant's] hearing loss." On the Office's form report, Dr. Perry diagnosed high frequency sensorineural hearing loss and stated that this condition was, "*possibly* factitiously exaggerated by [appellant]." (Emphasis in the original.)

On May 4, 2000 the Office requested a valid pure tone audiogram from Dr. Perry. In a supplement report dated May 11, 2000, he stated that appellant's repeat audiometric data was unfortunately as unreliable as his previous audiometric data. Dr. Perry stated: "We have ascertained a pure-tone average of 50 decibels in the left ear for air conduction and 30 decibels in the left ear for bone conduction. [Appellant's] speech reception threshold, however, is only five decibels. His word understanding score at 45 decibels is 100 percent. These data are inconsistent and we are unable to provide you with a reliable audiogram of which I can feel confident."

On October 24, 2000 the Office referred appellant for another second opinion evaluation. Dr. Alan H. Dinesman, a Board-certified otolaryngologist, completed a report on November 22, 2000. He reviewed appellant's history of injury, performed a physical examination and diagnosed nonphysiologic hearing loss. Dr. Dinesman stated: "[Appellant's] audiogram is very nonphysiologic. His speech reception thresholds are 30 decibels in the right ear and 25 decibels in the left ear. The audiogram demonstrates bilateral severe sensorineural hearing losses with air conduction being greater than bone conduction which is also nonphysiologic." Dr. Dinesman stated that it was impossible to evaluate appellant's hearing loss on an accurate basis as he continued to have nonphysiologic responses that varied from one tester to another. However, he concluded that the ABR suggested that his hearing loss was probably close to what was seen on this work-related audiograms in 1995. Dr. Dinesman stated: "Given [appellant's] history of significant noise exposure in the past, having worked around welding, tree trimming and cutting and have been a truck driver, as well as the absence of being able to prove any progression or worsening of his hearing loss since the testing is nonphysiologic and inconsistent, I cannot find any evidence of any causality linking his present concerns about hearing loss to his time of employment at [the employing establishment]."

Appellant submitted evidence from Dr. Gilbert M. Ruiz, a Board-certified otolaryngologist, who in a report dated March 21, 2001, diagnosed tinnitus and recommended a hearing aid evaluation. On December 1, 1999 Dr. Ruiz stated that appellant had noise-induced hearing loss with congenital hearing. Appellant also submitted audiograms corresponding to these visits. He submitted an additional audiogram dated November 11, 2002. These reports are insufficient to meet appellant's burden of proof as Dr. Ruiz did not supply the date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure nor a statement of the reliability of the tests. However, the Office found that the additional medical evidence was sufficient to require further development of appellant's claim.

The Office referred appellant for an additional evaluation with Dr. William Carl Smith, a Board-certified otolaryngologist, on December 10, 2002. The audiologist stated that the air conduction results given were not a true reflection of appellant's hearing ability. Dr. Smith reviewed appellant's history of injury and test results and diagnosed bilateral high frequency sensorineural hearing loss. He opined that appellant's hearing loss was due to his employment-related noise exposure. Dr. Smith stated: "[Appellant] does have more of a hearing loss than would be expected secondary to presbycusis at age 53." However, Dr. Smith found that appellant's hearing loss was not ratable under the appropriate standards.

The Office medical adviser reviewed this report on January 21, 2003 and stated that appellant's speech reception thresholds and pure tone audiogram scores did not agree. He concluded that appellant's February 26, 2002 pure tone audiogram was not reliable and was not sufficient to establish his claim for hearing loss.

The issue of causal relationship is a medical one and must be resolved by probative medical evidence.[4] The Office attempted development of the medical evidence by referring appellant to four specialists for otologic examinations and audiometric evaluations.

The medical evidence submitted from Drs. Moss, Perry, Dinesman and Smith is insufficient to establish appellant's claim. Dr. Moss noted a normal physical examination with inconsistent audiometric testing. Dr. Perry also noted a normal physical examination and addressed major discrepancies between appellant's air and bone conduction tests. He described the test findings as contrived. Dr. Dinesman diagnosed a nonphysiologic hearing loss, noting that it was impossible to evaluate appellant's hearing loss on an accurate basis. Similarly, Dr. Smith noted appellant's air conduction test results were not a tone reflection of his hearing ability. The Board finds that the Office has fulfilled its obligation in the development of the medical evidence in this case. The various examining physicians have all commented on inconsistent audiometric testing and the validity of appellant's test results. The medical evidence of record does not establish the causal relationship between appellant's hearing loss and his federal employment. Appellant has not submitted any other medical evidence providing reliable audiometric testing and a reasoned opinion that his hearing loss was caused or aggravated by noise exposure in his federal employment.[5]

[4] *See Roger Williams*, 52 ECAB 468 (2001); *Ruby I. Fish*, 46 ECAB 276 (1994).

[5] *See Leon F. Rogina*, Docket No. 00-2495 (issued July 18, 2001).

The January 29, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member