

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT T. TANITA and DEPARTMENT OF THE AIR FORCE,  
KOKEE AIR FORCE STATION, Kauai, HI

*Docket No. 03-560; Submitted on the Record;  
Issued June 17, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained noise-induced hearing loss causally related to factors of his federal employment.

On November 20, 2000 appellant, then a 55-year-old electronics mechanic, filed a claim for hearing loss, stating that he first realized that his condition was caused or aggravated by his employment on March 12, 1978. He stated that he had been employed as a full-time radar technician since 1966 but was not provided hearing protection training until 1972. The employing establishment noted that appellant first reported his condition to his supervisor on November 13, 1998 and that no medical treatment had been received. The employing establishment also noted that appellant has "ongoing exposure due to diesel generators." In support of his claim, he submitted a statement in which he further described his noise exposure and a statement from Melvin Kauahi, Detachment Commander, who provided noise level findings for the equipment to which appellant was exposed. Sergeant Kauahi advised that a hearing conservation program was established in 1972.

By letter dated February 15, 2001, the Office of Workers' Compensation Programs advised appellant that the information he had submitted was insufficient to establish that he sustained a hearing loss as alleged. The Office requested that he submit medical evidence including copies of audiogram examinations. The Office also requested that the employing establishment provide further evidence regarding appellant's job duties and noise exposure. In response by letter dated February 21, 2001, signed by both appellant and Sergeant Kauahi for audiograms dated October 6, 1966, March 12, 1972, March 6, 1977, August 12, 1983, March 8, 1987, October 20, 1993 and June 4, 1995 were submitted. Appellant also submitted statements he had previously provided with his claim.

By decision dated April 2, 2001, the Office denied appellant's claim. The Office noted that appellant had not responded to the February 15, 2001 Office letter.

On May 4, 2001 appellant requested reconsideration “based on information that was submitted and received by the Office on March 1, 2001.” By decision dated July 31, 2001, the Office denied review of its April 2, 2001 decision. On September 16, 2001 appellant filed an appeal with the Board.<sup>1</sup> In a decision dated May 30, 2002, the Board remanded the case to the Office “for reconstruction and proper assemblage of the case record.” The Board also ordered the Office to issue an appropriate decision in order to protect fully appellant’s appeal rights. On August 6, 2002 the Office reissued the March 31, 2001 decision, denying review of its prior merit decision.

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

The record submitted on appeal contains the following audiogram test results: October 6, 1966, revealing no hearing loss; March 12, 1972, revealing high frequency bilateral hearing loss; March 6, 1977 and August 12, 1983, noting no hearing loss; March 8, 1987, revealing high frequency hearing loss; October 20, 1990, revealing high frequency binaural hearing loss; and June 4, 1995, which revealed high frequency hearing loss, bilaterally. These reports were received by the Office on March 9, 2001, more than three weeks prior to the date of the Office’s merit decision.

The record also includes an August 8, 2000 report from appellant’s supervisor who noted that appellant had been exposed to noise producing equipment during his 24-hour shift, on an average of 10 times a month, from 1965 to January 1997. The noise levels ranged from 78 to 83 decibels. This report was included in appellant’s initial claim and was received by the Office on January 26, 2001. The record also includes an amended August 8, 2000 report which includes the supervisor’s signature and the comment “1,000 cycle blowers” under the frequency heading. The Office received this report on March 9, 2001.

In *William A. Couch*,<sup>2</sup> the Board remanded the case because the Office, in issuing a decision, failed to consider new evidence submitted four days prior to that decision. The Board stated:

The Federal Employees’ Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board’s jurisdiction of a case is limited to reviewing that evidence that was before the Office at the time of its final decision, it is necessary that the Office review all the evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.

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<sup>1</sup> Docket No. 02-205.

<sup>2</sup> 41 ECAB 548 (1990).

The evidence of audiograms and noise exposure was responsive to the Office's February 15, 2001 letter and was received by the Office three weeks prior to its decision. The case must, therefore, be remanded for the Office to consider this evidence. After such further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated August 6, 2002 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
June 17, 2003

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member