

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CECILIO O. ACOSTA and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 03-370; Submitted on the Record;  
Issued March 20, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a hearing loss causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On September 21, 2000 appellant, then a 68-year-old retired aircraft welder, filed an occupational disease claim alleging a hearing loss due to being exposed to hammering, grinding, sanding and blasting noise in his federal employment. In support of his claim, appellant submitted numerous personnel forms and his application for federal employment.

By letter dated November 29, 2000, the Office requested that appellant submit additional information. The Office requested that appellant discuss his employment history, discuss his exposure to noise during his federal employment and give the date that he first noticed a hearing loss. Appellant did not file a timely response.

By decision dated March 8, 2001, the Office denied appellant's claim. The Office indicated that, although the initial evidence of file supported that appellant experienced the claimed employment exposures, there was no medical evidence to establish that a condition had been diagnosed in connection with appellant's employment.

By letter dated September 1, 2001 and received by the Office on September 10, 2001, appellant requested an oral hearing. By decision dated October 15, 2001, the Office denied appellant's hearing request as it was not timely filed.

By letter dated November 3, 2001, appellant requested reconsideration and submitted a copy of an audiogram conducted by Dr. Albert Fernandez, an otolaryngologist. The audiogram contains a graph showing different readings for different hearing level decibels. Dr. Fernandez checked the lines indicating a hearing loss in the right ear of mild, moderate, moderate-severe and severe. For the left ear, he checked all the lines from normal up to profound hearing loss.

Appellant also submitted a form completed by Dr. Patrick N. Brown, an internist, wherein he noted that appellant had severe-noise induced hearing loss due to occupational chronic exposure.

By decision dated January 30, 2002, the Office conducted a merit review of appellant's claim but denied the claim as appellant failed to provide medical documentation showing that appellant's hearing loss was caused by his employment.

By letter dated February 27, 2002, appellant again requested reconsideration. In addition to evidence previously submitted, appellant forwarded a copy of an October 15, 2001 audiogram by Dr. Gilbert M. Ruiz, a Board-certified otolaryngologist, which contained a graph with regard to appellant's alleged hearing loss.

By decision dated May 28, 2002, the Office denied reconsideration for the reason that the evidence submitted was of repetitious nature and not sufficient to warrant review of the prior decision.

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

It is well established that in order for a claimant to establish that a condition was sustained in the performance of duty in an occupational disease claim, appellant must submit:

“(1) medical evidence establishing the presence of the claimed condition; (2) a statement specifying the employment factors alleged to have caused or contributed to that condition; and (3) medical evidence explaining how and why the diagnosed condition is causally related to the employment factors identified by the claimant.”<sup>1</sup>

The Board finds that appellant has provided sufficient medical evidence to warrant further development by the Office, as he submitted an audiogram, which was accompanied by a physician's indication that it showed hearing loss. Both Drs. Fernandez and Brown indicated that appellant had hearing loss; Dr. Brown further indicated that this hearing loss was noise induced. Furthermore, a graph was submitted for appellant's audiogram, although it was not satisfactorily interpreted.

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility for the development of the evidence.<sup>2</sup> The Office has an obligation to see that justice is done.<sup>3</sup>

The reports of Drs. Brown and Fernandez, although insufficiently rationalized to establish that appellant sustained a work-related hearing loss, do provide enough support for

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<sup>1</sup> *Charles E. Burke*, 47 ECAB 185 (1995).

<sup>2</sup> *Mark A. Cacchione*, 46 ECAB 148, 152 (1994).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354, 360 (1989).

appellant's claim to require further development by the Office.<sup>4</sup> Also there is no contrary evidence in the record.

Accordingly, this case is returned to the Office for further development of the record. On return of the case, the Office shall refer appellant, a statement of accepted facts and the record to a Board-certified otolaryngologist for clinical examination, audiometric testing and a rationalized opinion discussing whether appellant's work as an aircraft welder could have caused the claimed hearing loss. Following this and any other development as deemed necessary, the Office shall issue an appropriate decision in the case.<sup>5</sup>

The decisions of the Office of Workers' Compensation Programs dated May 28 and January 30, 2002 are hereby set aside and this case is remanded to the Office for further development consistent with this decision.

Dated, Washington, DC  
March 20, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> *Mark A. Cacchione, supra* note 2.

<sup>5</sup> Based on this disposition, the issue of the denial of appellant's request for reconsideration is moot.