

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY J. BLACKWELL and DEPARTMENT OF THE ARMY,
U.S. ARMY MISSILE COMMAND, Redstone Arsenal, AL

*Docket No. 03-2005; Submitted on the Record;
Issued October 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

On November 20, 2002 appellant, then a 57-year-old criminal investigator, filed a claim alleging that he sustained an employment-related hearing loss due to exposure to noise at work. He claimed that since 1963 he had been exposed to the sound of jet engines, small arms fire and various machines.¹ Appellant submitted numerous records regarding his treatment for various conditions by employing establishment physicians. He also submitted several audiograms which detailed the results of hearing testing performed by the employing establishment.

In June 2003, the Office of Workers' Compensation Programs referred appellant to Dr. George Godwin, a Board-certified otolaryngologist, for evaluation of his hearing. Dr. Godwin performed audiologic testing on June 24, 2003 and, in an accompanying undated report, provided a diagnosis of mild neurosensory hearing loss.² He stated that appellant's hearing loss was not due to exposure to noise at work and indicated in support of this opinion that "hearing loss during federal employment is consistent with presbycusis."

The Office requested that a district medical adviser evaluate the report of Dr. Godwin and provide an opinion regarding appellant's entitlement to a schedule award. In a report dated

¹ Appellant worked as a pilot for the U.S. Air Force from 1963 to 1983 and as a criminal investigator for the employing establishment from 1984 until his retirement on October 17, 2002.

² Dr. Godwin indicated that appellant had normal ear canals and drums and that he exhibited normal findings upon the performance of drum tests. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 20, 30 and 35 respectively. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 20, 20 and 25 respectively.

July 11, 2003, the district medical adviser indicated that he had reviewed the report of Dr. Godwin and stated:

“Dr. Godwin examined claimant on June 24, 2003, and found a bilateral, mild neurosensory hearing loss which he deemed ‘not due’ to federal employment (hearing loss during that time frame ‘consistent with presbycusis.’) I agree. No schedule award.”

By decision dated July 17, 2003, the Office denied appellant’s claim on the grounds that the medical evidence did not show that he sustained a hearing loss in the performance of duty. The Office medical adviser noted that Dr. Godwin found that appellant’s hearing loss was not due to factors of his employment and that this opinion was confirmed by the district medical adviser.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

The schedule award provisions of the Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁸

Appellant did not submit sufficient medical evidence to establish that he sustained a hearing loss in the performance of duty. He submitted numerous records regarding his treatment for various conditions and several audiograms which detailed the results of hearing testing performed by the employing establishment. However, none of these documents contained an opinion that he sustained an employment-related hearing loss.⁹

Moreover, the record contains medical evidence which shows that appellant did not sustain an employment-related hearing loss. In an undated report, Dr. Godwin, a Board-certified otolaryngologist who served as an Office referral physician, detailed findings of audiologic testing performed on June 24, 2003 and diagnosed mild neurosensory hearing loss. He concluded that appellant's hearing loss was not due to employment-related noise exposure and explained his findings by noting that appellant's hearing loss was caused by the natural progression of a nonwork-related condition, presbycusis. In a report dated July 11, 2003, a district medical adviser for the Office provided an opinion indicating that he agreed with Dr. Godwin that appellant's hearing loss was not employment related.¹⁰

⁸ *Id.*

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). It should be noted that the Office has accepted that appellant was exposed to hazardous noise at work as alleged.

¹⁰ Given that it has been determined appellant has not established an employment-related hearing loss, it is not necessary to determine whether appellant has a ratable hearing loss under the standards of the A.M.A., *Guides*.

The July 17, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 27, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member