

**United States Department of Labor
Employees' Compensation Appeals Board**

JAMES L. McLEOD, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA, Employer**

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**Docket No. 03-1954
Issued: January 13, 2004**

Appearances:
James L. McLeod, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On August 4, 2003 appellant filed a timely appeal from the June 20, 2003 decision of the Office of Workers' Compensation Programs which denied compensation benefits for his hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant's mild sensorineural hearing loss is causally related to his federal employment.

FACTUAL HISTORY

On February 5, 2003 appellant, then a 63-year-old retired sheet metal mechanic (aircraft), filed a claim for compensation alleging that his hearing loss was a result of his federal employment. He was appointed to the position of sheet metal worker in 1980. Until his voluntary retirement in 2003, he worked around routers, drills, hammers, rivet guns, grinders, impact tools, pneumatic ratchets, cutters and punches for 40 hours a week. At times appellant

worked on the flight line with diesel-powered air compressors, air conditioning equipment and other machines. He also worked in functional testing, where jet engines are tested before flight. After his yearly physical in 1996, appellant was informed that his hearing had worsened. He did not notice the hearing loss until 2001, when he began asking people to repeat themselves and started increasing the volume on his television. Appellant was last exposed to noise in his federal employment on January 31, 2003.

The employing establishment submitted appellant's personnel records, including serial audiograms. The employing establishment also submitted a list of the tools he typically encountered and the noise levels they generated. Noise levels for appellant's type of work ranged from 78 to 125 decibels based on instantaneous measurements. Noise levels of 85 decibels or greater were considered hazardous. Daily exposure ranged from 83 to 97 decibels in one building, 81 to 112 decibels in another. Based on the worst-case time-weighted average of 112 decibels with an attenuation of 34 decibels for dual protection (foam earplugs and earmuffs), the provided hearing protection was deemed adequate.

On March 3, 2003 Lieutenant Colonel Angela S. Williamson, a licensed audiologist, reported that appellant's mild bilateral hearing loss beginning in 1996, was "most likely due to the occupational noise he has been exposed to at [the employing establishment]."¹ The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Kenneth J. Walker, an otolaryngologist, for evaluation.

On May 15, 2003 Dr. Walker examined appellant and obtained audiometric testing. On May 19, 2003 he reported the following:

"[Appellant] was evaluated in my office on May 15, 2003 for [a] second opinion regarding hearing loss. [He] relates a history of progressive bilateral hearing loss present over the past several years. [Appellant] reports long-term exposure to heavy machinery. The left tympanic membrane was mildly retracted on exam[ination]. The middle ears were without effusion. Tympanometry is within the normal range on the right and showed negative pressure on the left. Audiogram reveals the presence of only mild bilateral high-frequency sensorineural hearing loss with a conductive loss noted on the left. It is my opinion that [appellant's] sensorineural hearing loss is mild and consistent with presbycusis. The conductive loss and tympanic membrane changes are consistent with his oral cancer."

Dr. Walker completed an otologic evaluation form provided by the Office. To the question, "Does this individual show a sensorineural loss that is in excess of what would be normally predicted on the basis of presbycusis?" Dr. Walker answered "No." To the question; "Was the workplace exposure, as described in the material provided, sufficient as to intensity and duration to have caused the loss in question?" Dr. Walker answered; "Yes. Machinery." He

¹ An audiologist is not a "physician" within the meaning of the Federal Employees' Compensation Act and is, therefore, not competent to give a medical examination or a medical opinion. *Henry T. Scott*, 27 ECAB 444 (1976) and cases cited therein at note 4; *see* 5 U.S.C. § 8101(2) ("physician" defined).

also checked a box, however, that the sensorineural hearing loss seen was, in part or all, “not due” to noise exposure encountered in appellant’s federal civilian employment. The form requests that the physician provide medical rationale for the opinion, but Dr. Walker did not provide any additional comment.

In a decision dated June 20, 2003, the Office denied appellant’s claim for compensation. The Office found that Dr. Walker’s report represented the weight of the medical evidence and established that appellant’s hearing loss was not due to noise exposure in his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS

The factual evidence establishes appellant’s occupational exposure to noise in the course of his federal employment. His duties are not in dispute and the noise levels he encountered in his position as sheet metal mechanic (aircraft) are established by the noise dosimetry survey submitted by the employing establishment and accepted by the Office. The record, therefore, establishes that appellant experienced a specific event, incident or exposure occurring at the

² 5 U.S.C. §§ 8101-8193.

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

time, place and in the manner alleged. The question for determination is whether the accepted noise exposure caused appellant's mild sensorineural hearing loss.

On May 19, 2003 Dr. Walker reported that appellant's sensorineural hearing loss was mild and consistent with presbycusis or hearing loss that occurs with age. He repeated this opinion on the otologic evaluation form the Office provided him. Appellant did not show a sensorineural hearing loss that was in excess of what would be predicted on the basis of presbycusis and the loss was, in part or all, not due to noise exposure encountered in federal employment.

Although this opinion negates any causal relationship between the accepted noise exposure at work and appellant's diagnosed hearing loss, Dr. Walker offered another opinion that confuses matters. To the question "Was the workplace exposure, as described in the material provided, sufficient as to intensity and duration to have caused the loss in question?" Dr. Walker answered "Yes. Machinery." It is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 decibels.⁸ If appellant's workplace exposure was sufficient to have caused the loss in question, then it remains unclear why Dr. Walker attributed the loss solely to presbycusis. The Office must seek clarification from the referral physician on how he was able to distinguish presbycusis from an occupational hearing loss and how he was able to determine that the accepted workplace exposure contributed nothing to appellant's condition. Because the Office referred appellant to Dr. Walker, it has the responsibility to obtain a report that will resolve such issues.⁹

CONCLUSION

This case is not in posture for a decision. The Board will set aside the Office's June 20, 2003 decision denying appellant's claim and remand the case for further development of the medical evidence. After such further development as may be necessary to resolve the issues in this case, the Office shall issue an appropriate final decision on appellant's claim for compensation.

⁸ Federal (FECA) Procedure Manual, Part 3 -- *Requirements for Medical Reports*, Chapter 3.0600.8.a (September 1994).

⁹ *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *see also Milton Lehr*, 45 ECAB 467 (1994) (where the Board remanded the case to the Office for a medical opinion and the opinion obtained from the attending physician was insufficient to resolve the issue, the Board found that the Office should obtain a supplemental report from the attending physician curing the deficiency and resolving the issue in the case).

ORDER

The June 20, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: January 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member