United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 07-330**
	)	**Issued: April 5, 2007**
TENNESSEE VALLEY AUTHORITY, FOSS OPS, Gallatin, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 17, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 23, 2006 denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a hearing loss causally related to the performance of his employment duties.

FACTUAL HISTORY

On May 24, 2006 appellant, then a 56-year-old boilermaker and fossil mechanic, filed a claim for occupational disease claiming that he sustained a hearing loss due to factors of his employment.

After the claim was filed, the Office received additional documents from appellant. The Office received unsigned hearing test results from a contractor to the Tennessee Valley Authority

(TVA) dated August 25, 2000, October 24, 2001, October 22, 2002, September 15, 2003 and September 16, 2004. The Office also received audiologist reports dated October 25, 2000 and April 19, March 15 and 29, 2005, prepared by Audiologist Barbara Higgins. Employee audiometric test results dated September 7, 1999 were also received. Appellant submitted a response to the questions listed on the federal injury compensation checklist, wherein he noted that his only exposure to noise was at work. An unsigned letter dated August 25, 2000 from TVA Health and Safety stated that appellant had mild and severe hearing loss.

In a June 14, 2006 letter, the Office asked appellant to provide additional factual information. In a separate June 14, 2006 letter, the Office requested additional information from appellant's employer. There was no response.

On July 6, 2006 appellant filled a duplicate occupational disease claim for hearing loss. Attached to the claim was a list of appellant's response to the questions listed on the federal injury compensation checklist.

By an August 23, 2006 decision, the Office denied appellant's claim for hearing loss on the grounds that the evidence did not establish that the medical condition resulted from the accepted work-related events.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.[1] The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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 all claimants. The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2] Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing losses.[3]

[1] 5 U.S.C. § 8107(c).

[2] A.M.A., *Guides* 250 (5th ed. 2001).

[3] *Vernon Brown*, 54 ECAB 376 (2003).

ANALYSIS

Appellant alleged that he sustained a hearing loss due to factors of his employment. The employing establishment did not respond to the Office's request for further information regarding appellant's exposure to hazardous noise. The Office thereafter accepted that the work-related events occurred as alleged. The Office, however, denied the claim on the grounds that the medical evidence did not establish causal relationship. The medical evidence submitted by appellant consisted of audiologist reports and hearing tests conducted by a contractor to the employer.

Office procedures contemplate that, when evidence submitted by the claimant in a duplicative hearing loss claim does not meet all of the Office's requirements for adjudication, the Office should refer the claimant for an examination by a qualified specialist.[4] In this case, the evidence submitted by appellant does not meet the Office's requirement therefore appellant should have been referred for an examination by a specialist.

Additionally, the Office procedures state that the employing establishment is the best source for both the employee's history of employment and the employee's exposure to conditions and substances.[5] In this case, the employing establishment did not respond to the Office's request for information. As the employing establishment is the best source for appellant's employment and exposure history, the Office should have received this information before assessing appellant's claim.

CONCLUSION

On remand the Office should prepare a statement of accepted facts and refer appellant for a medical examination to obtain a rationalized opinion as to whether appellant's hearing loss is causally related to the accepted factors of his federal employment. Following such further development as may be necessary, the Office shall issue an appropriate final decision on this issue.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.806.5(a)(3) (October 1995).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.806.4(b)(3)-(4) (October 1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 23, 2006 is set aside and the case is remanded to the Office for further development consistent with this decision of the Board.

Issued: April 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board