

The Office prepared a statement of accepted facts which indicated that appellant worked for the employing establishment for one year prior to 1991. It noted that it had previously awarded him a schedule award in 1981 for a binaural hearing loss sustained during his work for the Department of the Interior; Office File No. 2050180140. The Office referred appellant to Dr. Mohammad Zafar Iqbal, a Board-certified otolaryngologist, for a second opinion evaluation. On August 12, 2003 Dr. Iqbal reviewed the statement of accepted facts and performed an audiological and otological evaluation. He diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure during the course of appellant's federal employment. Based on the results of the audiogram, Dr. Iqbal found that appellant had a 93 percent binaural hearing loss.

On September 16, 2003 the Office accepted appellant's claim for binaural hearing loss. On November 1, 2003 an Office medical adviser reviewed the evidence and opined that appellant had a 93 percent binaural hearing loss. On December 8, 2003 he reviewed the medical evidence and asserted that the proposed schedule award was "flawed." The Office medical adviser noted that appellant worked as a tractor operator only from 1990 to April 16, 1991. He found that it was "medically improbable" that appellant had maximum noise exposure during this period. The Office medical adviser recommended that the Office determine appellant's noise exposure during this time period prior to issuing a schedule award decision. He further noted that Dr. Iqbal's audiologist did not address the reliability of the audiogram.¹

The Office requested that the employing establishment and the Department of the Army describe appellant's noise exposure during his time on the job. It prepared a statement of accepted facts identifying appellant's federal employment duties. The Office indicated that appellant worked from 1990 through April 16, 1991 as a tractor operator with the Department of the Army and from April 7 to October 6, 1991 as a tractor operator for the employing establishment. Appellant was exposed to an unknown level of noise up to eight hours per day.

On February 6, 2004 the Office referred appellant to Dr. Dennis C. Fitzgerald, a Board-certified otolaryngologist. On May 9, 2004 Dr. Fitzgerald noted that his hearing had "remained relatively stable from 1988 up until the present time" and that any hearing loss subsequent to October 1991 was unrelated to his federal employment. He found that appellant's noise exposure from 1981 to 1991 may have resulted in additional hearing loss.

On September 8, 2004 an Office medical adviser asserted that appellant was entitled to a schedule award for an additional 42 percent binaural hearing loss. On September 22, 2004 the employing establishment provided information regarding his work history. The employing establishment indicated that appellant began work on April 7, 1991 and stopped work on October 6, 1991 and provided the hours worked. By letter dated December 2, 2004, the Office advised appellant that it would obtain a supplemental report from Dr. Iqbal based on an accurate statement of accepted facts. On July 13, 2005 it again referred him to Dr. Iqbal. The Office enclosed an updated statement of accepted facts and requested that Dr. Iqbal determine whether appellant experienced hearing loss due to 464 hours of noise exposure as a tractor operator from

¹ The Office medical adviser indicated that an audiogram performed on December 27, 2002 showed only fair reliability.

April 7 through October 6, 1991. It further requested that Dr. Iqbal address the validity of audiograms obtained between December 27, 2002 and August 13, 2003.

On August 7, 2005 Dr. Iqbal again performed an audiological and otological evaluation. He diagnosed bilateral sensorineural hearing loss and tinnitus due to noise exposure in the course of appellant's federal employment. Dr. Iqbal asserted, "Noise exposure from April 7, 1991 to October 6, 1991 did *not* cause hearing loss. He already had noise hearing loss prior to that, per audiogram dated October 18, 1988." (Emphasis in the original.) Dr. Iqbal further opined that any hearing loss subsequent to 1991 was not employment related as there was no further work-related noise after that date. He advised that any schedule award should be calculated based on the October 18, 1988 audiogram. Dr. Iqbal found that audiograms dated December 22, 2002, August 12, 2003 and April 26, 2004 were invalid due to inconsistencies.

On October 2, 2005 an Office medical adviser reviewed Dr. Iqbal's report and noted that the physician found that appellant had no hearing loss due to his employment after 1991. Dr. Iqbal further determined that audiograms obtained from 2002 to 2004 were invalid. The Office medical adviser opined that based on Dr. Iqbal's report the Office "had no basis to revise the previously processed 20 percent binaural hearing loss schedule award." He noted that Dr. Iqbal was "unequivocal" in finding that appellant had no hearing loss due to his noise exposure from April 7 to October 6, 1991.

By decision dated October 20, 2005, the Office denied appellant's claim for a schedule award for a hearing loss. It found that he had not established that he sustained any hearing loss due to his work exposure from April 7 to October 6, 1991. On October 25, 2005 appellant requested an oral hearing. At the telephonic hearing, held on March 27, 2006, he attributed his hearing loss to noise exposure during the course of his federal employment and not just to his exposure with the employing establishment in 1991. In a decision dated June 13, 2006, the Office hearing representative affirmed the October 20, 2005 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.³ In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.⁴

As a claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial

² 5 U.S.C. §§ 8101-8193.

³ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁴ *Renee M. Straubinger*, 51 ECAB 667 (2000).

evidence, it is thus the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.⁵ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury.⁶ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁷

ANALYSIS

Appellant filed a claim for hearing loss due to his work as a tractor operator with the employing establishment from April 7 to October 6, 1991. He also requested a schedule award. The Office accepted appellant's claim for binaural hearing loss but, after development of the medical evidence, found that he had not established entitlement to a schedule award for hearing loss due to noise exposure from April 7 to October 6, 1991. The Office noted that appellant had previously received a schedule award in 1981 for a 20 percent hearing loss due to noise exposure while working for the Department of the Interior.

The Board finds that the evidence does not establish that appellant sustained hearing loss due to his work as a tractor operator with the employing establishment from April 7 to October 6, 1991 entitling him to a schedule award. In a report dated August 12, 2003, Dr. Iqbal, an Office referral physician, diagnosed bilateral sensorineural hearing loss due to employment-related noise exposure. An Office medical adviser reviewed Dr. Iqbal's report and audiogram and opined that the Office should obtain an accurate employment history for appellant prior to issuing a schedule award.⁸ On September 22, 2004 the employing establishment provided work history information. The Office prepared a new statement of accepted facts. On July 13, 2005 the Office requested that Dr. Iqbal reevaluate appellant and address whether his noise exposure as a tractor operator for 464 hours from April 7 through October 6, 1991 resulting in hearing loss. On August 7, 2005 Dr. Iqbal diagnosed sensorineural hearing loss due to noise exposure during the course of appellant's federal employment. He explained, however, that he had no hearing loss due to noise exposure from April 7 to October 6, 1991. Dr. Iqbal further found that appellant had no hearing loss causally related to his federal employment after 1991. He opined that audiograms dated 2002 to 2004 were invalid due to inconsistent results and maintained that any schedule award should be based on the October 18, 1988 audiogram. An Office medical adviser reviewed Dr. Iqbal's report on October 2, 2005 and concurred with his findings. The Board finds that the opinions of Dr. Iqbal and the Office medical adviser represent the weight of the medical evidence. Dr. Iqbal determined that appellant had work-related hearing loss but that it was not caused by noise exposure from April 7 to October 16, 1991. His opinion is probative

⁵ See *Raymond E. Gwynn*, 35 ECAB 247 (1983).

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁸ On May 9, 2004 Dr. Fitzgerald, a second opinion physician, found that appellant had no hearing loss due to noise exposure after 1991.

as it is rationalized, based on a thorough examination and an accurate work history.⁹ Appellant did not submit reasoned medical evidence showing that he had hearing loss causally related to noise exposure from April 7 through October 6, 1991. Accordingly, he has not established entitlement to a schedule award for hearing loss due to noise exposure during this period.

On appeal, appellant claimed that he sustained increased hearing loss due to noise exposure throughout his federal employment and not only for the period April 7 through October 6, 1991. He can file a claim before the Office for an increased schedule award under the appropriate file number based on medical evidence showing that the progression of an employment-related condition, without exposure to new employment factors, has resulted in a greater impairment than previously calculated.¹⁰

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award for hearing loss due to employment-related exposure to noise from April 7 through October 6, 1991.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2006 is affirmed.

Issued: August 6, 2008
Washington, DC

⁹ In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report. *See Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *See Tommy R. Martin*, 56 ECAB 273 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).