United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 08-1662**
	)	**Issued: December 18, 2008**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2008 appellant filed a timely appeal from December 31, 2007 and April 18, 2008 merit decisions of the Office of Workers' Compensation Programs denying his occupational disease claim. 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 sustained a hearing loss in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On September 13, 2006 appellant, then a 61-year-old materials expeditor, filed an occupational disease claim alleging that he sustained hearing loss due to factors of his federal employment. He did not stop work. In an accompanying statement, appellant related:

> "My job as a forklift operator at CCAD required that I transport materials all around the depot. The areas of high noise would include the cleaning shop where they sandblast and use the high pressure air hose. Also the hangers create noise from the sheet metal workers using air hammers and air pressure drills. The aircrafts around the hangers also create high levels of noise. The blade shop uses the whirl tower to test the blades which creates high noise levels. Also at the blade shop they use air hammers and sandblast the blades. I also deliver to the plating shop where the generators downstairs create high noise frequencies. The cowling shop is also a noise hazard because of the rivets they shoot into sheet metal. When delivering the parts to each shop, I sometimes stay for 30 minutes or more which exposes me to the noise for long periods of time. I always use the proper hearing protection required by CCAD."

Appellant described his work history and noise exposure. He worked for the employing establishment as a forklift operator for 32 years. Appellant also worked from August 1969 to September 1971 for a steel company.

By letter dated September 26, 2006, the Office requested that the employing establishment provide the noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

On October 17, 2006 the employing establishment controverted the claim. It noted that a preemployment hearing test dated June 5, 1974 revealed hearing loss. The employing establishment also indicated that appellant had previously worked as a steel laborer.

In a statement dated October 19, 2006, Richard Luna, a supervisor, denied that appellant went into areas which required hearing protection or had been issued hearing protection. Mr. Luna stated:

> "To the best of my knowledge I am unable to provide the job site where the exposure occurred. The forklift operators are not station[ary] at any site long enough. They are constantly on the move.
>
> "To the best of my knowledge it would be difficult to determine the source of machinery because they do not go into work centers. There are hearing protection signs posted on doors and we do not deliver inside those perimeters. We deliver just outside of these areas. The exposure per hour varies because it depends on the numbers of pallets they drop off or pick up as well [as] the number per day/week."

The record contains audiograms from the employing establishment dated May 7, 1974, May 19, 1983, March 13, 1986, April 6, 1987 and March 22, 1998.[1] The May 19, 1983 audiogram provided the reason for the audiogram as Code 2, or a reference audiogram following exposure to noise duties. The individual performing the audiogram noted that appellant had previously been issued earplugs and that he was counseled on hearing protection.

By decision dated February 1, 2007, the Office denied appellant's claim on the grounds that he failed to establish the occurrence of the alleged noise exposure.

On February 22, 2007 appellant requested an oral hearing. At the telephonic hearing, held on October 9, 2007, appellant's representative noted that appellant moved around to different areas during the course of his employment, including blasting areas and locations where rivets were driven into sheet metal. Appellant maintained that he entered high noise areas and locations requiring hearing protection when picking up and delivering items. His representative contended that the noise levels around the doors of the depot exceeded hazardous decibel levels.

By decision dated December 31, 2007, the Office hearing representative affirmed the February 1, 2007 decision. She found that appellant had not met his burden of proof to establish that he entered hazardous noise areas while delivering materials.

In a June 17, 2005 electronic mail message, an employee recommended that the doors around A-34 and A-35 be closed to help reduce noise exposure for employees in the transmission shop.

On March 13, 2008 appellant requested reconsideration. He disputed Mr. Luna's assertion that he did not enter areas with hazardous noise levels. Appellant contended that the hearing protection signs on the doors "were not posted until recently."

By decision dated April 18, 2008, the Office denied modification of its December 31, 2007 decision.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.[2] Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.[3]

Proceedings under the Federal Employees' Compensation Act are not advsersarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish

[1] The record also contains an audiogram dated June 27, 2006.

[2] *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

[3] *See John W. Butler*, 39 ECAB 852, 858 (1988).

his or her claim, the Office also has a responsibility in the development of the evidence.[4] This is particularly true when the evidence is of the character normally obtained from the employing establishment or other government source.[5] 20 C.F.R. § 10.118(a) states: "The employer is responsible for submitting to [the Office] all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time."

The Office's procedure manual provides:

> "It is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 decibels. Acoustic trauma may, however, result from decibel levels below 85 decibels if exposure is sufficiently prolonged. [The Office] therefore does not require that the claimant show exposure to injurious noise in excess of 85 decibels as a condition to approval of the claim."[6]

ANALYSIS

Appellant filed an occupational disease claim alleging that he sustained a hearing loss due to noise exposure while working as a forklift driver. The Office denied his claim on the grounds that he did not establish that he was exposed to hazardous noise during the course of his federal employment. Appellant worked at the employing establishment as a forklift operator beginning in 1974. On May 19, 1983, March 13, 1986, April 6, 1987 and March 22, 1998 he underwent audiograms performed by the employing establishment to monitor any hearing loss. The May 19, 1983 test specified that it was given as a result of "exposure in noise duties." The Office requested that the employing establishment provide detailed information about appellant's noise exposure, including copies of noise level surveys for each work location, the sources and periods of noise exposure and whether he wore ear protection. In response, a supervisor generally alleged that appellant moved around to many locations but did not enter hazardous noise areas. The employing establishment did not, as requested, submit any noise level surveys or provide the specific decibel levels to which he was exposed as a forklift operator from 1974 to the present.

The Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[7] The Office failed to obtain information about the duration and level of appellant's noise exposure during the course of his federal employment prior to denying his claim. The Board will remand the case for the Office to obtain the dates and periods of his noise exposure at the employing establishment, the specific decibel levels to which he was exposed and whether hearing protection was provided.

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[4] *See Claudia A. Dixon*, 47 ECAB 168 (1995).

[5] *R.E.*, 59 ECAB ___ (Docket No. 07-1604, issued January 17, 2008); *Willie A. Dean*, 40 ECAB 1208 (1989).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (October 1990).

[7] *See R.E.*, *supra* note 5.

Additionally, regarding the Office's finding that appellant had not established exposure to hazardous noise, the Office's procedure manual provides:

> "It is generally accepted that hearing loss may result form prolonged exposure to noise levels above 85 decibels. Acoustic trauma may, however, result from decibel levels below 85 decibels if exposure is sufficiently prolonged. [The Office] therefore does not require that the claimant show exposure to injurious noise in excess of 85 decibels as a condition to approval of the claim."[8]

Consequently, regardless of the specific decibel level of exposure, the Office must consider whether the employment-related noise exposure was sufficiently prolonged to result in acoustic trauma.[9] Such a question is medical in nature and should be resolved by a Board-certified otolaryngologist. The Office's procedure manual directs the Office to refer appellant for audiological evaluation and otological examination unless a reliable medical report is already in the record.[10] Upon remand, the Office should obtain the pertinent factual evidence, prepare a statement of accepted facts and refer appellant for an otological and audiological evaluation.

CONCLUSION

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

[8] *Supra* note 6.

[9] *Eufrosino T. Torrado*, Docket No. 95-1208 (issued February 14, 1997).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (October 1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 18, 2008 and December 31, 2007 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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