



Office accepted that appellant was exposed to such noise through the time that he last worked for the employing establishment on May 11, 1996.<sup>1</sup>

The Office referred appellant to Dr. John Lyle, a Board-certified otolaryngologist, for evaluation of his hearing. On April 18, 1997 Dr. Lyle reported the findings of audiologic testing obtained on that date.<sup>2</sup> He concluded that appellant did not have a neurosensory hearing loss related to exposure to noise at work, but rather had a hearing loss related to middle ear disease which was not employment related.

In a July 24, 1997 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to show that he sustained a hearing loss in the performance of duty. The Office found that the opinion of Dr. Lyle showed that appellant's hearing problems were due to a nonwork-related disease process.

Appellant requested a hearing before an Office hearing representative. In an April 20, 1998 decision, the Office hearing representative set aside the July 24, 1997 decision and remanded the case for further development. The hearing representative determined that the record was missing documents which were necessary to allow Dr. Lyle to render a reasoned opinion on the cause of appellant's hearing problems. He remanded the case to the Office to obtain reports of any prior ear surgeries, noise level surveys of appellant's workplace and the results of audiometric testing. The hearing representative directed the Office, after these documents were obtained, to request that Dr. Lyle produce a supplemental report on the cause of appellant's hearing problems.

On remand to the Office, additional documents were added to the record including November 28, 1994 and March 2, 1998 reports of right ear surgery, audiograms and noise level surveys.<sup>3</sup> The November 28, 1994 report indicated that Dr. Cyrus S. Amiri, an attending Board-certified otolaryngologist, performed a right tympanomastoidectomy with ossicular chain reconstruction and canal repair. The March 2, 1998 report noted that he performed a right revision modified radical mastoidectomy with removal of a huge cholesteatoma, hydroxyapatite prosthesis and cartilaginous graft.<sup>4</sup>

In a May 11, 2000 report, Dr. Amiri stated that appellant had been under regular care for his right mastoid cavity since his 1994 right tympanomastoidectomy and would require such care for the rest of his life. In an August 23, 2004 report, Dr. John P. Roche, an attending Board-

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<sup>1</sup> Appellant retired effective October 11, 1996.

<sup>2</sup> Air testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 45, 25, 20 and 35 respectively. Bone testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 0, 10 and 5. Air testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 15, 5 and 15. Bone testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 0, 5 and 5.

<sup>3</sup> The addition of these documents took an extended period because the record had to be reconstructed.

<sup>4</sup> In a September 9, 1997 report, Dr. Amiri stated that appellant was suffering from a regrowth of cholesteatoma in his right middle ear and mastoid for which he needed an exploration with modified radical mastoidectomy and possible reconstruction of ossicles.

certified otolaryngologist, stated that appellant was status post tympanomastoidectomy and required regular follow-up care to debride and clean his ear and to track the course of his hearing loss. He stated: “[Appellant] has been receiving work[ers’] compensation for chronic ear disease.”<sup>5</sup>

In February 2007, the Office referred appellant’s case to Dr. Lyle for a supplemental opinion regarding the cause of his hearing loss. The Office provided Dr. Lyle with the documents which were obtained in connection with the remand of the case to the Office.

On February 27, 2007 Dr. Lyle discussed the operative reports, audiograms and noise level surveys in the record. He indicated that appellant’s audiograms showed a conductive hearing loss rather than a neurosensory hearing loss in that the bone lines which delineated hearing loss due to noise exposure were normal. Dr. Lyle stated that “a conductive hearing loss is almost never caused by noise exposure or work[ers’] compensation” and noted:

“My considered opinion in this case is that the chronic ear disease documented for over 20 years was due to chronic ear disease and not to his work. Noise injury causes a classic high frequency neurosensory hearing loss and not a conductive hearing loss. The only exception to that would be a case like my Vietnam veteran who had a blast injury fracturing the ossicular bones and eardrums acutely.... This patient has a bone line which is what his audiogram would look like without a conductive hearing loss which is normal on both sides. Essentially, the conductive hearing loss from the chronic ear disease functioned as an earplug for this patient avoiding any damage to the inner ear. Therefore, since the conductive hearing loss which is the patient’s hearing loss is caused by chronic ear disease and not by noise exposure.... He does not have a history of massive explosion with rupture of the drum and damage of the ossicles.”

In a July 12, 2007 decision, the Office denied appellant’s claim on the grounds that the medical evidence did not establish that he sustained a hearing loss in the performance of duty. The Office found that the opinion of Dr. Lyle, including his supplemental report, showed that appellant’s hearing problems were due to a nonwork-related disease process.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees’ Compensation Act<sup>6</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>7</sup>

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<sup>5</sup> The record also contains a similar October 13, 2006 report of Dr. Roche.

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

The medical evidence required to establish a causal relationship 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 implicated 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.<sup>8</sup>

### ANALYSIS

Appellant alleged that he sustained a hearing loss due to exposure to noise at work. The Office accepted that appellant was exposed to noise at work as alleged; however, the medical evidence does not establish that he sustained a hearing loss in the performance of duty.

Appellant submitted August 23, 2004 and October 13, 2006 reports of Dr. Roche, an attending Board-certified otolaryngologist, who stated that he was status post tympanomastoidectomy and required regular follow-up care to debride and clean his ear and to track the course of his hearing loss. Dr. Roche asserted that appellant had been receiving workers' compensation for chronic ear disease. However, his reports are of limited probative value as he did not explain his history that appellant was receiving Office compensation for his ear problems<sup>9</sup> and he did not provide a clear opinion that appellant had a specific ear condition due to employment factors.<sup>10</sup>

The record contains medical evidence which shows that appellant's hearing problems were not employment related. In a February 27, 2007 report, Dr. Lyle, a Board-certified otolaryngologist who served as an Office referral physician, concluded that appellant did not have an employment-related hearing loss in either ear. He noted that appellant's audiograms showed that he had a conductive hearing loss in both ears, rather than a neurosensory hearing loss which is the type of hearing loss which is seen when noise exposure is the cause. Dr. Lyle stated that the bone lines in appellant's audiograms, which tracked neurosensory hearing loss, were normal in both ears. He. Lyle noted that a conductive hearing loss is almost never caused by noise exposure and indicated that appellant's chronic ear disease, which required multiple surgeries, was due to a nonwork-related disease process. Dr. Lyle indicated that a conductive hearing loss could be caused by a major blast which fractures the ossicular bones and eardrums acutely, but noted that there was no indication that appellant suffered such an injury.

Appellant did not submit medical evidence establishing that he sustained an employment-related hearing loss. Therefore, the Office properly denied his claim for compensation.

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<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>9</sup> There is no indication in the record that appellant received Office compensation for an employment-related hearing loss.

<sup>10</sup> 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).

**CONCLUSION**

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 12, 2007 decision is affirmed.

Issued: January 14, 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