

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN R. SWENSON and DEPARTMENT OF THE AIR FORCE,
HILL AIR FORCE BASE, UT

*Docket No. 03-1196; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

On July 11, 2002 appellant, then a 59-year-old aircraft engine mechanic, filed a Form CA-2 claim for occupational disease, alleging that he sustained a hearing loss causally related to noise exposure in his federal employment. Appellant stated that he first became aware that his hearing loss was caused or aggravated by his employment in May 1987. He continued to be exposed to jet engine noise until his retirement on January 31, 1998. Accompanying the claim form were numerous audiograms dating from 1967 to 1998, a March 10, 2002 letter from appellant describing his employment history and documentation from the employing establishment which described his exposure to loud noise in the course of his employment.

In a report dated September 7, 2001, Dr. Roark B. Neville, a Board-certified family practitioner, noted appellant's history of noise exposure and stated that his hearing loss began in 1987, when he had a significant shift in his hearing threshold and had gotten progressively worse since 1998. Dr. Neville concluded: "I feel it is very clear that his hearing loss is related to his time at work around airplane engines."

In a report dated October 15, 2001, Dr. Robert L. Mellor, a Board-certified otolaryngologist, stated that he had reviewed 30 years of audiograms which revealed normal hearing starting in the early 1960s, declining to moderate to severe sensorineural hearing loss especially in the left ear. He stated that physical examination revealed normal tympanic membranes and middle ear spaces and enlarged turbinate.¹ Dr. Mellor noted that a magnetic resonance imaging (MRI) scan revealed a mycosis on the right fossa of Rosenmueller,² but no

¹ Turbinates are small bones in the nasal passages; see *DORLAND'S ILLUSTRATED Medical Dictionary*, 1777 (27th ed. 1988).

² A throat condition. *Id.* at 657, 1273.

other abnormalities were noted. He diagnosed sensorineural hearing loss which appeared to be noise-induced, progressing over the last 30 years, due to noise exposure at work, probable sleep apnea and fossa of Rosenmueller mycosis, doubtfully pathologic.

The Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Ronald F. Gordon, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

Dr. Gordon examined appellant on October 31, 2002, at which time he underwent an extensive audiologic and otologic evaluation. On his examination form, Dr. Gordon diagnosed mixed conductive and sensorineural hearing loss and indicated by check mark that this was not due to noise exposure. Dr. Gordon explained that appellant "does have some sensorineural loss which may be due to noise but otosclerosis also causes sensorineural hearing loss." In an accompanying narrative report also dated October 31, 2002, Dr. Gordon noted that appellant had a history of noise exposure and denied any history of family hearing loss, otitis media, use of ototoxic drugs or head trauma. He indicated that the audiometric testing revealed a 41.2 percent left monaural hearing loss, a 13.1 percent right monaural hearing loss and a binaural hearing impairment of 17.6 percent. With respect to the cause of appellant's hearing loss, Dr. Gordon stated: "[Appellant] has mixed conductive, sensorineural hearing loss bilaterally. He has a large left conductive component and a smaller right conductive component probably two percent to inherited autosomal dominant otosclerosis." Dr. Gordon noted that conductive hearing loss can be treated surgically, but appellant would probably still need hearing aids.

In a December 8, 2002 report, an Office medical adviser calculated appellant's degree of hearing loss and concluded, similarly to Dr. Gordon, that appellant had a 41.2 percent left monaural hearing loss, a 13.1 percent right monaural hearing loss and a 17.8 percent binaural hearing loss. The Office medical adviser indicated by checking a box marked "no" that appellant did not have a hearing loss caused or aggravated by employment-related noise exposure. The Office medical adviser also checked a box indicating that appellant had binaural sensorineural hearing loss. Finally, the Office medical adviser indicated that appellant could benefit from hearing aids.

On January 13, 2003 appellant submitted an additional report from Dr. Mellor and additional audiograms dated December 23, 2002. In his report dated January 3, 2003, Dr. Mellor indicated that audiograms had been repeated on December 23, 2002 and stated:

"[Appellant] has a sensorineural hearing loss with a very mild conductive component in the low frequencies in his left ear. The majority of his hearing loss appears to be sensorineural or nerve-induced. [Appellant's] hearing is asymmetric and he has had an MRI which is normal showing no acoustic tumors.

"I have reviewed his audiograms over the last three years to watch this deterioration and listen to his history. I think that a good bit of his hearing loss is compatible with noise trauma."

In a decision dated January 28, 2003, the Office found that appellant had not sustained an employment-related hearing loss.

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

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence.⁷ 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.⁸

In the instant case, there is a conflict in the medical evidence, as there were opposing medical opinions regarding the issue of whether appellant sustained a hearing loss in the performance of duty. The Office referral physician, Dr. Gordon, a Board-certified otolaryngologist, found that appellant's condition was not causally related to his employment. He provided medical reports, in which he acknowledged that appellant had mixed conductive and sensorineural hearing loss, but explained that the diagnosed condition of otosclerosis can cause both conductive and sensorineural loss. On the other hand, Dr. Mellor, a Board-certified otolaryngologist, opined that appellant's conductive component was very mild in the low

³ 5 U.S.C. §§ 8101-8193.

⁴ *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

⁵ *Id.*

⁶ *Arturo A. Adame*, 49 ECAB 421 (1998).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Claudio Vazquez*, 52 ECAB 496 (2001).

frequencies of the left ear and concluded that a large portion of appellant's progressive hearing loss was attributable to noise-induced sensorineural loss.⁹

Section 8123(a) of the Act provides that when there is a disagreement between a physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹⁰ Accordingly, the case will be remanded to the Office for resolution of the conflict regarding whether appellant's bilateral hearing loss was causally related to his federal employment, in whole or in part and either directly or through aggravation, acceleration or precipitation. On remand the Office should refer appellant, along with the case record and a statement of accepted facts, to an appropriate specialist for a rationalized opinion on the issues in conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated January 28, 2003 is set aside and remanded in accordance with this opinion.

Dated, Washington, DC
September 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ Whenever a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the claimant is entitled to compensation. No attempt should be made to apportion a condition between employment and nonemployment related conditions. *John D. Ayers*, 48 ECAB 440 (1997); *see Henry Klaus*, 9 ECAB 470 (1954) (aggravation of preexisting disease or defect is as compensable as an original or new injury).

¹⁰ *Lawrence C. Parr*, 48 ECAB 445 (1997).