U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIO-REY PANLILIO and DEPARTMENT OF THE NAVY, PUBLIC WORKS CENTER, Oakland, CA

Docket No. 99-776; Submitted on the Record;
Issued August 10, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a compensable hearing loss causally related to factors of his federal employment.

On December 31, 1997 appellant, then a 46-year-old instrument and digital computer mechanic, filed an occupational disease claim (Form CA-2) alleging that on or after October 29, 1990 he sustained tinnitus and hearing loss. On the claim form, appellant asserted that he first realized that his condition was caused or aggravated by his federal employment on October 29, 1992. Appellant also noted his exposure to specific "noise hazards" including boiler systems, compressor systems, machinery controls and emergency generators. He explained that he did not file his claim within 30 days of relating his condition to his federal employment because he hoped it would "go away." On the reverse side of the claim form, an employing establishment utility manager noted that appellant first received medical care from Kaiser Permanente Medical Center. He also noted that appellant first reported his condition on October 29, 1992.

To support his claim, appellant submitted a summary of occupational disease exposure. He noted that from 1984 to 1997 he was exposed to noise from emergency generators, compressors and boilers, sewer and industrial waste treatment plants for eight hours each workday. Appellant also submitted an audiology report dated June 22, 1995 by a physician whose signature is illegible. The physician noted that appellant had "clinically good hearing" with "no apparent hearing loss." Appellant further submitted audiograms and hearing conservation data reports dated October 17, 1988 to September 16, 1997. Additionally, appellant submitted progress notes dated May 31, 1990 to March 8, 1995 from Renaldo Browne, C.M.A. and a physician whose signature is illegible. Appellant also submitted progress notes dated June 26 to September 10, 1990 from a physician whose signature is illegible. In his notes dated June 26 and July 10, 1990, the physician noted a significant threshold shift due to noise exposure indicating a hearing deterioration since appellant's reference audiogram was established. In his notes dated September 10, 1990, the physician indicated a significant threshold shift due to ear disease or trauma. Appellant further submitted an audiogram and accompanying report dated October 1, 1990 by K.M. Curtis, an exmainer, which was reviewed

by Dr. James Haight, a family practitioner. The audiogram showed the following decibel losses at the 500, 1,000, 2,000, 3,000, 4,000, 5,000 and 6,000 Hertz (Hz) frequency levels: 5, 10, 0, 0, 5, 5 and 10 of the right ear; and 10, 10, 5, 0, 5, 10 and 10 of the left ear. Additionally, appellant submitted a prediction of hearing acuity from the acoustic reflex form dated August 10, 1995. Appellant also submitted an occupational and hearing health history form dated August 10, 1995. On the form, appellant indicated that he did not have difficulty hearing, ear surgery, childhood diseases, which affected his hearing, he had never been knocked unconscious, been prescribed medication having a potential side effect of hearing impairment and he did not have noisy hobbies. Appellant also indicated that he heard "high intensity noises on electronic devices" in his ears. Appellant further submitted a report dated August 16, 1995 from Dr. Charles Fankhauser, Ph.D., a state-certified audiologist, regarding appellant's August 10, 1995 examination. Dr. Fankhauser noted appellant's work history and noise exposure. He also noted that appellant reported a "left-sided high intensity white noise tinnitus," but did not have difficulty communicating nor had he considered the use of hearing amplification. Dr. Fankhauser noted that he performed air and bone conduction hearing threshold testing, speech reception threshold testing, speech discrimination testing and immittance audiometry. He found that appellant had 0 percent impairments of both the right and left ears with pure tone average decibel losses of 21.5 in both ears. Dr. Fankhauser noted, "[appellant's] present hearing impairment does not represent a ratable disability." He certified accurate completion of an occupational and hearing health history questionnaire. Additionally, appellant submitted an audiogram, dated August 10, 1995, from an examiner with the initials of "C.F." or "E.F."

By letter dated July 8, 1998, the Office of Workers' Compensation Programs referred appellant, along with his medical records and a statement of accepted facts, to Dr. Barry Baron, a Board-certified otolaryngologist, for examination. Dr. Baron performed an audiologic evaluation of appellant on August 3, 1998 and an audiogram was performed on that same date. In his report dated August 3, 1998, Dr. Baron noted appellant's medical and employment histories and that he complained of hearing a humming noise in both ears beginning in 1990. Dr. Baron stated that, throughout appellant's employment, he was exposed to the noise of boilers, compressors and motors and that he wore ear protection. Dr. Baron noted that the audiometry results showed right ear decibel losses of 25, 25, 25, 25 and 50 at the 500, 1,000, 2,000, 3,000 and 6,000 Hz levels, respectively. He also noted left ear decibel losses of 15, 20, 20, 30 and 35 at the 500, 1,000, 2,000, 3,000 and 6,000 Hz levels, respectively. Dr. Baron diagnosed "tinnitus, mild-to-moderate, bilateral." He further stated, "[o]bjectively, [appellant's] hearing is at the lower limits of normal, bilaterally with normal speech reception thresholds and there is no ratable hearing loss. Appellant's tinnitus is consistent with a long history of noise exposure and is medically connected to his federal employment." Dr. Baron noted that because appellant's hearing loss was in the normal range, he did not recommend treatment. The test reliability was rated "fair."

The Office referred appellant's record, including Dr. Baron's August 3, 1998 report, to Dr. David N. Schindler, a Board-certified otolaryngologist acting as Office medical consultant. In his report dated September 20, 1998, Dr. Schindler stated that appellant's condition was aggravated by his federal employment and he diagnosed "bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss of noise exposure." He noted that appellant's October 8, 1986 audiogram, the earliest of record, showed normal hearing. Dr. Schindler also noted that the audiograms of record revealed "a fluctuating and mildly progressive high frequency hearing loss. By applying the Office's standards for evaluating hearing loss,

Dr. Schindler found that appellant had a zero percent binaural neurosensory hearing loss and noted that hearing aides were not indicated.

By decision dated November 12, 1998, the Office denied appellant's claim for compensation on the grounds that his bilateral hearing loss was not ratable. The Office found that appellant sustained a permanent hearing loss causally related to factors of his federal employment but noted that "only hearing loss in excess of the first 25 decibels of the loss at the indicated frequencies after averaging is compensable."

The Board finds that appellant did not sustain a compensable hearing loss.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.[1] The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.[2] However, as a matter of administrative practice, the Board has stated: "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."[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.,) *Guides to the Evaluation of Permanent Impairment* (fourth edition rev., 1993).[4] 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.[5] 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.[6] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[7] The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

[1] 5 U.S.C. § 8107.

[2] *Richard Larry Enders*, 48 ECAB 184 (1996); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[3] *See Richard Larry Enders, supra* note 2 at 186.

[4] *George L. Cooper*, 40 ECAB 296, 302 (1988).

[5] A.M.A., *Guides* 224 (4th ed. rev., 1993).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Donald A. Larson*, 41 ECAB 947, 951 (1990).

In addition to the standard by which it computes the actual percentage of hearing loss, the Office has set forth requirements for the medical evidence used in evaluating hearing loss. The requirements, contained in the Federal (FECA) Procedure Manual, provide that the claimant undergo audiological evaluation and otological examination, that the audiological testing precede the otological examination and be performed by different individuals, that the audiologist and otolaryngologist be certified and that audiological testing equipment meet calibration requirements established by the American Speech and Hearing Association.[10] Further, the procedure manual requires that audiometric testing include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores.[11] Additionally, the otolaryngologist's report must include the date and hour of examination, the date and hour of the employee's last exposure to loud noise, a rationalized medical opinion regarding the relationship between hearing loss and employment-related noise exposure and a statement regarding the reliability of the test.[12]

In the present case, the Office properly found that appellant did not sustain a compensable hearing loss. Dr. Schindler, by applying the Office's standards to the results contained in Dr. Baron's report, totalled appellant's right ear decibel loss at 100 and divided by 4 to obtain a 25 decibels loss for the right ear. The 25 decibels average was reduced by 25, as discussed above, which resulted in a 0 percent monaural loss for the right ear. Dr. Baron also added appellant's left ear decibel loss at 84 and divided by 4 to obtain a 21.25 decibel loss for the left ear. The 21.25 decibels average was reduced by 25, as discussed above, which resulted in a 0 percent left ear monaural hearing loss. In accordance with the Office's standardized provisions for determining compensable hearing loss, Dr. Schindler properly found that appellant sustained no ratable loss.

Dr. Baron's report constitutes the weight of the medical evidence as it is compliant with the Office's procedures for determining compensable hearing loss outlined in the Federal (FECA) Procedure Manual and Board precedent.[13] Moreover, the findings of both Dr. Baron and Dr. Schindler are entitled to greater weight because both doctors are Board-certified otolaryngologists. Dr. Fankhauser's report was either based on an audiogram he performed himself, or, alternatively, the audiogram was performed by an unidentified examiner without evidence of certification. Also, Dr. Fankhauser did not indicate in his report whether appellant was examined by an otolaryngolgist. The audiograms and hearing conservation reports dated October 17, 1998 to September 16, 1997 are of diminished probative value because they do not conform to the Office's standardized procedures for rating compensable hearing loss. The audiogram dated September 16, 1997 did not show testing at the 3,000 Hz frequency level. The audiograms dated August 21, 1997 and October 31, 1988 were unaccompanied by reports by a

[10] Federal (FECA) Procedure Manual, Part 3, Medical, *Schedule Awards*, Chapter 3.0700.4(b) Exhibit 3 (October 1990).

[11] *Id.*

[12] *Id.*

[13] *See Eugene F. Butler*, 36 ECAB 393 (1984). The Board found that the Office properly refused to reopen appellant's case for further merit review on the grounds that one of the submitted audiograms did not include testing at 3,000 Hz as required by the Office's standardized procedures for evaluating hearing loss.

licensed otolaryngologist. The audiogram dated September 10, 1990 did not show a compensable hearing loss.

The A.M.A., *Guides* also allows for an award for tinnitus under disturbances of vestibular function.[14] However, no additional ratable permanent monaural hearing loss has been identified or documented; therefore, there is no medical evidence that tinnitus caused or contributed to a ratable hearing loss. Additionally, since no objective findings of disequilibrium or evidence that appellant cannot perform his usual activities of daily living were presented, appellant has not established that he is entitled to an award for tinnitus causing disturbances of vestibular function. Appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity.[15] There is no evidence establishing a loss of wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated November 12, 1998 is affirmed.

Dated, Washington, D.C.
August 10, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *See* A.M.A., *Guides* 228 (4th ed. rev., 1993).

[15] *Richard Larry Enders, supra* note 2 at 187-88.