U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFRED A. ABEYTA and DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Barstow, CA

Docket No. 03-2003; Submitted on the Record;
Issued December 15, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award greater than a four percent hearing loss in his right ear.

On May 28, 2002 appellant, then a 52-year-old mechanic and inspector of heavy duty equipment, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that continuing exposure to loud noises at work has led to loss of hearing. In support of his claim, appellant, who is still working, noted that he has been exposed to loud noises as a mechanic in the performance of his federal duties for over 20 years, though he wears ear protection. Appellant submitted the results of several years of hearing tests.

In a June 27, 2002 letter, the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts to Dr. Montra Kanok, a Board-certified otolaryngologist. In an August 3, 2002 report, Dr. Kanok wrote that appellant complained of hearing loss, which he notices when he watches television. According to Dr. Kanok, appellant denies any tinnitus and a review of appellant's medical history reveals a loss of hearing over time, but much less than would be expected from appellant's exposure. Dr. Kanok reported appellant's audiological examination of the right ear revealed a hearing threshold of 20 decibels at 500 hertz (Hz), 20 decibels at 1,000 Hz, 25 decibels at 2,000 Hz, 45 decibels at 3,000 Hz and 25 decibels at 4,000 Hz with a speech threshold of 25 decibels, for an average hearing tone loss of 26.75. For the left ear Dr. Kanok reported 20 decibels at 500 Hz, 20 decibels at 1,000 Hz, 25 decibels at 2,000 Hz, 30 decibels at 3,000 Hz and 40 decibels at 4,000 Hz with a speech threshold of 20 decibels for an average hearing tone loss of 26.75. Dr. Kanok diagnosed mild to moderate sensorineural hearing loss and opined that, based on the pattern of the pure tone testing and his history, appellant's hearing loss is related to his federal employment.

In a November 5, 2002 decision, the Office accepted appellant's claim for a hearing loss and indicated that if he filed for a schedule award it would refer his records to the district medical adviser. On November 12, 2002 appellant filed a claim for compensation (Form CA-7) requesting a schedule award. In a January 31, 2003 report, Dr. Brian Schindler, acting as the

district medical adviser, wrote that appellant's audiogram shows that he has a bilateral high frequency sensorineural hearing loss with a good correlation between the speech reception thresholds and the pure tone averages. Dr. Schindler opined that appellant's condition was related to the noise exposure at his federal employment. He found that appellant had 3.8 percent loss in the right ear and 0 percent loss in the left ear for a 4 percent monaural hearing loss. He arrived at that conclusion for appellant's right ear by adding 20 decibels at 500 Hz, 20 decibels at 1,000 Hz, 25 decibels at 2,000 Hz, 45 decibels at 3,000 Hz for a sum of 110, divided by 4 to equal 27.5 less the fence of 25 to equal 2.5 x 1.5 totaling 3.8 percent rounded up to 4 percent. For the left ear Dr. Schindler added reported 20 decibels at 500 Hz, 20 decibels at 1,000 Hz, 25 decibels at 2,000 Hz, 30 decibels at 3,000 Hz to total 95, divided by 4 equaling 23.75, less 25 equaling 0.

In a February 18, 2003 decision, the Office found appellant entitled to a schedule award of $1,450.68 based on a 4 percent hearing loss in his right ear and 0 percent in the left. In an April 28, 2003 letter, appellant requested reconsideration and submitted an April 2, 2003 audiology report signed by Beth Lillywhite, M.A. that indicated that appellant had a mild high frequency sensorineural hearing loss with occasional tinnitus caused by long term exposure to loud noises. For the right ear appellant's thresholds were 30, 20, 25 and 45 = 120 divided by 4 = 30, less 25 = 5 times 1.5 totaling 7.5 percent, which is rounded up to 8 percent For the left ear appellant's thresholds were 20, 25, 25 and 35 = 105, divided by 4 = 26.25-25 = 1.25 times 1.5 totaling 1.875, rounded up to 2 percent.

In a June 6, 2003 report, Dr. Schindler wrote that he had reviewed appellant's medical records, including the most recent audiology report and concluded that the most recent test results were similar to Dr. Kanok's, but did have worse thresholds. He opined that the differences likely represent the test-retest variability found in all audiograms, which in and of itself does not constitute a significant threshold change from Dr. Kanok's audiogram. Dr. Schindler noted that there was no physical examination of the ears by an otolaryngologist and, therefore, he concluded that the April 2, 2003 results do not change the accuracy of Dr. Kanok's evaluation.

In a July 17, 2003 decision, the Office denied modification of its February 18, 2003 decision finding the medical evidence insufficient.

The Board finds that the July 17, 2003 denial of modification must be affirmed as appellant failed to submit sufficient medical evidence to establish a hearing loss greater than four percent for his right ear.

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 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

[1] 5 U.S.C. § 8107.

[2] *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

matter of administrative practice the Board has stated: "For consistent results and to insure equal justice under 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, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (4th ed. 1993).[4] Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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]

On January 3, 2003 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Kanok, a Board-certified otolaryngologist, on August 3, 2002 and applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 25 and 30 respectively. These decibel losses were totaled at 95 decibels and were divided by 4 to obtain the average hearing loss of 23.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute an 0 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 25 and 45 respectively. These decibel losses were totaled at 110 decibels and were divided by 4 to obtain the average hearing loss of 27.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 2.5, which was multiplied by the established factor of 1.5 to compute a 3.75 percent hearing loss in the right ear, which was rounded up to 4 percent. To compute the binaural hearing loss, the lesser loss in the left ear, 0 percent, was multiplied by the established factor of 5, added to the 3.75 percent loss in the right ear and this sum was divided by the established factor of 6 to calculate a .06 percent binaural hearing loss.

[3] *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

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

[5] A.M.A., *Guides*, 224-25 (4th ed. 1993).

[6] *Id*.

[7] *Id*.

[8] *Id*.

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

On appeal appellant contends that the four percent schedule award he received was not adequate compensation for his hearing loss and submitted the results of an April 2, 2003 audiogram that showed appellant had an eight percent hearing loss in his right ear and a two percent in his left. Dr. Kanok indicated that he had reviewed these new results and found them similar with any changes due to a test-retest variability and does not constitute a significant change. More importantly, Dr. Schindler noted that when the April 2, 2003 audiogram was performed there was no physical examination of the ears or authentication by an otolaryngologist and, therefore, he concluded that the April 2, 2003 results do not change the accuracy of Dr. Kanok's evaluation. The Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss.[10] As the April 2, 2003 audiogram was not certified by a physician, it does not constitute new medical evidence.

The decisions by the Office of Workers' Compensation Programs dated February 18 and July 17, 2003 are hereby affirmed.

Dated, Washington, DC
December 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).