U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORENZO P. VILLANUEVA, JR., and DEPARTMENT OF THE AIR FORCE, LACKLAND AIR FORCE BASE, OK

Docket No. 03-2000; Submitted on the Record;
Issued November 6, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 13-percent permanent binaural loss of hearing.

On December 2, 2001 appellant, then a 49-year-old woodworker, filed a claim alleging that he sustained a loss of hearing as a result of his federal employment. After obtaining records from the employing establishment, including serial audiograms, the Office of Workers' Compensation Programs found that he was exposed and continued to be exposed to hazardous noise at work from such sources as electric saws, air tools and woodcutting machines. The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Alan Dinesman, an otolaryngologist, for an evaluation.

On January 7, 2003 audiometric testing at 500, 1000, 2000 and 3000 cycles per second (cps) revealed hearing thresholds of 10, 10, 50 and 70 decibels, respectively, in the right ear and 10, 10, 45 and 70 decibels, respectively, in the left. The test results were judged valid and representative of appellant's hearing sensitivity. Dr. Dinesman diagnosed sensorineural hearing loss. He concluded that this hearing loss was due, at least in part, to noise exposure encountered in appellant's federal civilian employment because the loss was progressive and in excess of what could be attributed to old age. He also diagnosed tinnitus but, found that this condition did not impact appellant's ability to perform activities of daily living.[1] Dr. Dinesman recommended a trial evaluation of hearing aids.

On February 2, 2003 an Office medical adviser reviewed the medical evidence, the statement of accepted facts and Dr. Dinesman's findings. He explained that appellant's hearing loss should be judged by the audiometry obtained on January 7, 2003 because it met all of the Office's standards and was part of Dr. Dinesman's examination. Based on this audiometry, the

[1] Speech reception thresholds were at 10 decibels and auditory discrimination scores were at 84 percent in each ear.

Office medical adviser determined that appellant had a binaural loss of hearing of 13 percent. The date of maximum medical improvement was noted to be January 7, 2003.

On March 3, 2003 the Office accepted appellant's claim for binaural hearing loss and authorized hearing aids. He filed a claim for a schedule award.

On July 15, 2003 the Office issued a schedule award for a 13 percent permanent binaural loss of hearing. The schedule award represented 26 weeks of compensation from January 7 to July 7, 2003.

The Board finds that appellant has no more than a 13 percent permanent binaural loss of hearing.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2] Using the frequencies of 500, 1000, 2000 and 3000 cps, hearing thresholds at each frequency are added up and averaged. Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, averages below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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.[3] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[4]

According to the most recent audiometry, obtained on January 7, 2003, appellant's hearing thresholds were 10, 10, 50 and 70 decibels in the right ear and 10, 10, 45 and 70 decibels in the left. These total 140 and 135 decibels, respectively, for averages of 35 and 33.75. Subtracting the "fence" of 25 decibels leaves 10 and 8.75 decibels.[5] Multiplying by 1.5 to determine monaural impairment yields percentage losses of 15 in the right ear and 13.125 in the left.

[2] 20 C.F.R. § 10.404 (1999).

[3] A.M.A., *Guides* (5th ed. 2001).

[4] *Donald E. Stockstad*, 53 ECAB ___ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[5] Because the average hearing thresholds are over 25 decibels, appellant is considered to have an impairment in the ability to hear everyday sounds under everyday conditions, but only to the extent that the averages exceed 25 decibels.

To determine binaural hearing loss, the lesser loss, 13.125, is multiplied by 5 and then added to the greater loss, 15. This result, 80.625, is divided by 6 for a binaural hearing loss estimate of 13.4375 percent, which rounds to 13 percent. Therefore, the Office medical adviser properly calculated that appellant has a 13 percent binaural hearing loss.[6]

The 5th edition of the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to 5 percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."[7] Dr. Dinesman reported that tinnitus did not impact appellant's ability to perform activities of daily living. For this reason, no additional percentage is awarded for tinnitus.

On appeal, appellant takes issue with the period of the award, which ran from January 7 to July 7, 2003. Many claimants correctly point out that they must live with hearing loss for the rest of their lives, yet their schedule award covers only a period of weeks. Under the Federal Employees' Compensation Act, Congress has established a system that compensates permanent loss of hearing by the payment of a limited number of weeks of compensation. The Act's compensation schedule specifies a maximum of 200 weeks of compensation payable for the complete loss of hearing in both ears[8] and the schedule compensates partial loss of hearing at a proportionate rate.[9] Thus, compensation for a 13 percent binaural loss of hearing is 13 percent of 200 weeks or 26 weeks of compensation, which the Office awarded.

The period of compensation for a permanent impairment commences on the date that the employee reaches maximum medical improvement from the employment injury. Maximum medical improvement means that the physical condition of the injured member has stabilized and will not improve further.[10] The determination of maximum medical improvement depends primarily on medical evidence.[11] In hearing loss cases, the date of maximum medical improvement generally coincides with the date of the audiogram obtained for the physician who, in his best clinical judgment, determines that the employee's condition is static or well stabilized.[12] In this case, appellant's audiometry was obtained on January 7, 2003, which explains the reason his 26 weeks of compensation ran from January 7 to July 7, 2003.

[6] The record contains other audiograms which were obtained at an earlier date. However, these audiograms are of limited probative value as they were not certified by a physician as accurate; *see Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

[7] A.M.A., *Guides* 246 (5th ed. 2001).

[8] 5 U.S.C. § 8107(c)(13)(B).

[9] *Id*. at § 8107(c)(19).

[10] *E.g., James Kennedy, Jr.*, 40 ECAB 620 (1989).

[11] *E.g., Albert Valverde*, 36 ECAB 233 (1984).

[12] *See, e.g., James L. Thomas*, 31 ECAB 1088 (1980).

The Board finds that the Office followed standardized procedures in evaluating appellant's loss of hearing and properly issued a schedule award for that loss.

The July 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member