United States Department of Labor
Employees' Compensation Appeals Board

ROBERT D. NABORS, Appellant	)	
and	)	**Docket No. 04-92**
	)	**Issued: April 2, 2004**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Robert D. Nabors, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 3, 2003, which denied his claim for a schedule award for a hearing loss as unratable. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has a ratable loss of hearing, causally related to his federal employment.

FACTUAL HISTORY

On February 11, 2003 appellant, then a 56-year-old boiler plant operator, filed an occupational disease claim alleging that he sustained a binaural loss of hearing, causally related to his federal employment. He did not stop work.

By letter dated March 20, 2003, the Office requested further information from appellant regarding his employment and the onset of his condition.

In response appellant submitted employment-related forms and papers. Appellant also submitted his annual audiograms from the employing establishment hearing conservation program. Bilateral high frequency sensorineural hearing loss was noted on November 8, 2000 at frequencies of 4,000, 6,000 and 8,000 cycles per second Hertz (Hz).

On September 11, 2002 appellant's annual audiogram showed significant threshold shifting at 3,000 and 4,000 Hz. Appellant was, therefore, entered into a hearing conservation program, monthly follow-up to document this shifting and to establish a new baseline audiogram. On October 29, 2002 the significant threshold shifting at 3,000 and 4,000 Hz on the right was confirmed. The October 29, 2002 audiogram was used to establish a new baseline audiogram.

By an undated letter the Office referred appellant to an otolaryngologist for physical examination and audiological evaluation. On May 13, 2003 the Office advised appellant to schedule an examination with Dr. Howard Loveless, Jr., a Board-certified otolaryngologist.

On May 20, 2003 appellant underwent an audiometric evaluation and physical examination at Dr. Loveless' clinic. Upon examination Dr. Loveless found appellant to have normal canals and intact eardrums. He found that appellant's bone conduction audiometry results were consistent with his air conduction audiometry results, and that speech reception thresholds and auditory discrimination scores were good. Dr. Loveless diagnosed appellant as having sensorineural hearing loss in a classic noise-induced pattern, due to working in a high noise environment. Appellant's audiogram was noted as demonstrating the following decibel thresholds at the given frequencies: at 500, 1,000, 2,000 and 3,000 Hz, on the right; 20, 20, 20 and 30 decibels. On the left they were noted as 20, 15, 15 and 35 decibels. Dr. Loveless indicated that the above audiometric results were valid and representative of appellant's hearing sensitivity.

On August 5, 2003 the Office accepted that appellant sustained bilateral hearing loss, causally related to his federal employment.

On August 6, 2003 an Office medical adviser calculated that appellant did not have a ratable loss of hearing according to the Office's standards. The Office added his decibel frequency losses at 500, 1,000, 2,000 and 3,000 Hz in each ear, divided by 4 and subtracted a fence of 25 decibels. The results for both ears were zero, meaning that appellant's sensorineural high frequency hearing loss was not ratable under the Federal Employees' Compensation Act.

By decision dated September 3, 2003, the Office advised appellant that his high frequency sensorineural hearing loss was not ratable under the Act.[1]

[1] 5 U.S.C. § 8101 *et seq.*

LEGAL PRECEDENT

The schedule award provision of the Act and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner, in which the percentage of loss of a member shall be determined. 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides.*[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 evaluation hearing loss.[9]

ANALYSIS

An Office medical adviser applied the Office's standardized procedures to the audiogram from Dr. Loveless. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 20, 20, 20 and 30 respectively. These decibels were totaled 90 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500,

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[2] *See* 20 C.F.R. § 10.404 (1999).

[3] *Id.*

[4] *See* A.M.A., *Guides* at 250 (5th ed. 2001).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *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).

1,000, 2,000 and 3,000, revealed decibel losses of 20, 15, 15 and 35 respectively. These decibels were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.

The Office medical adviser then computed the binaural hearing loss by multiplying the lesser loss, zero, by five to equal zero, which was added to the greater loss, zero, to equal zero. The Office medical adviser then divided this figure by six to arrive at a zero percent binaural hearing loss.

CONCLUSION

The Board finds that the Office medical adviser correctly applied the Office's standards to Dr. Loveless' May 20, 2003 audiogram in determining that appellant had a zero percent binaural loss of hearing. There is no medical evidence that appellant has a greater loss, which would entitle him to a schedule award under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2003 is affirmed.

Issued: April 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member