

**United States Department of Labor
Employees' Compensation Appeals Board**

GARY W. RUNCHEL, Appellant

and

**DEPARTMENT OF THE AIR FORCE, HILL
AIR FORCE BASE, UT, Employer**

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**Docket No. 04-1445
Issued: September 29, 2004**

Appearances:
Gary W. Runchel, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 10, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated April 22, 2004, finding that he had not sustained a ratable hearing loss entitling him to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has established that he sustained a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On February 4, 2004 appellant, then a 61-year-old aircraft worker, filed an occupational disease claim for a hearing loss which he attributed to his federal employment.¹ Appellant stated that he worked around aircraft noise and close to a runway. He further stated that his hearing

¹ Appellant retired from the employing establishment on February 2, 2004.

loss was noted while taking an annual hearing test. Appellant indicated that his hearing had decreased over the last 21 years based on employing establishment medical records.

By letter dated February 6, 2004, the Office requested that the employing establishment provide additional information regarding appellant's noise exposure, use of ear protection and medical records pertaining to hearing or ear problems. By letter of the same date, the Office advised appellant that his claim form was insufficient to establish his claim. The Office further advised him about the type of factual and medical evidence he needed to submit to establish his claim.

Appellant submitted a statement dated January 26, 2004, noting that he first became aware of his hearing loss during annual physical examinations and that he first related his condition to his employment in approximately 1991 until January 2004. He contended that his condition was work related since he worked in high noise areas. Appellant noted that the history of his hearing loss could be found in the employing establishment medical records.² He indicated that he wore hearing protection provided by the employing establishment. Appellant stated that his hearing loss was due to his exposure to loud noises from sheet metal work, the blasting of aircraft, the use of high pressure water equipment on aircraft and pneumatic tools used to remove aircraft parts. He addressed his hobbies and the length of time he participated in these activities. Appellant provided a list of his nonfederal employment and employment records.

In a January 30, 2004 statement, appellant's supervisor, whose signature is illegible, responded to the Office's February 6, 2004 letter. He stated that appellant worked in his area from August 1991 until the present and used blasting equipment and pneumatic and hand tools. Appellant removed paint with a chemical stripper and high pressure water, used blasting equipment to remove paint from aircraft, pneumatic and hand tools to remove components and engines and a chemical stripper and high pressure water to remove paint. The supervisor noted that appellant used blasting equipment on an average of six to seven hours, two to three days a week, high pressure water equipment on an average of six to seven hours, one to two days a week from June 1996 until September 2000 and pneumatic tools four to five hours a day, one day a week. He concluded by noting that he had reviewed appellant's statement and that he concurred with it.

By letter dated March 25, 2004, the Office referred appellant together with a statement of accepted facts to Dr. Craig W. Anderson, a Board-certified otolaryngologist, for a second opinion medical examination.

Dr. Anderson submitted an April 14, 2004 report, noting a history that appellant worked for the employing establishment for 22 years and reported that his hearing was getting progressively worse and appellant first became aware of his hearing loss in 1991. Dr. Anderson noted that no prior audiogram studies had been provided, but the Office's statement of accepted facts indicated that appellant had normal hearing at the start of his employment with the employing establishment. He stated that appellant's hearing loss seemed to be in excess of what would be present from presbycusis. Dr. Anderson noted that appellant denied outside noise

² The Board notes that the record does not contain any medical records from the employing establishment.

exposure, family history or hobbies as an explanation for his hearing loss. He provided normal findings on physical examination and diagnosed a high frequency sensorineural hearing loss due, in part, to appellant's federal employment. Dr. Anderson stated that appellant had a steep high frequency loss pattern associated with noise-induced hearing loss and a history of significant noise exposure. He recommended a hearing aid trial.

An April 14, 2004 audiogram performed by Dr. Allen Anderson, an audiologist, accompanied Dr. Craig Anderson's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 10 and 60 respectively and in the left ear decibel losses of 5, 15, 5 and 35 respectively.

The Office medical adviser reviewed Dr. Craig Anderson's report and audiogram results. The Office medical adviser stated that appellant had a bilateral sensorineural hearing loss caused or aggravated by exposure to noise in his federal employment. He determined that appellant reached maximum medical improvement on April 14, 2004. Applying the Office standards for determining hearing loss, the medical adviser found that appellant had a zero percent binaural sensorineural hearing loss. He authorized a hearing aid trial for appellant.

By decision dated April 22, 2004, the Office accepted appellant's claim for hearing loss due to his employment-related noise exposure, but found the evidence of record insufficient to establish that he had a ratable hearing loss based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office determined that appellant was not entitled to a schedule award, but noted entitlement to medical benefits.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 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.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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.⁷ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

Dr. Craig Anderson, the second opinion specialist, examined appellant on April 14, 2004 and concluded that he sustained a high frequency sensorineural hearing loss related to long-term exposure to noise in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the April 14, 2004 audiogram obtained by Dr. Allen Anderson. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 10 and 60 respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain an average hearing loss of 20 decibels. This average 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 a 0 percent hearing loss in the right ear.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *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).

Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 15, 5 and 35 respectively. These decibel losses were totaled at 60 decibels and were divided by 4 to obtain an average hearing loss of 15 decibels. This average 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 a 0 percent hearing loss in the left ear. Accordingly, the Office medical adviser calculated appellant's hearing loss under the Office standardized procedures to be nonratable for both the right and left ears.

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings. This resulted in a calculation of zero percent binaural hearing loss in the right and left ears. The loss is not ratable under these standards and, therefore, not compensable for schedule award purposes. The Board finds that although appellant has sustained an employment-related loss of hearing, it is not ratable for purposes of a schedule award under the Act.¹²

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² *Royce L. Chute*, 36 ECAB 202 (1984).