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JON S. LIPSKY, Appellant)	
)	
and)	Docket No. 06-599
)	Issued: May 11, 2006
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Los Angeles, CA, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On January 20, 2006 appellant filed a timely appeal from an October 21, 2005 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award for an employment-related hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

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

FACTUAL HISTORY

On March 2, 2005 appellant, then a 50-year-old retired supervisory special agent, filed an occupational disease claim alleging that he sustained hearing loss due to factors of his federal employment.¹

The record contains audiograms dated 1994 to 2004 conducted as part of annual examinations for the employing establishment. Appellant further submitted a detailed description of his noise exposure during the course of his federal employment from 1984 until 2004.

By letter dated May 17, 2005, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Henry Bikhazi, a Board-certified otolaryngologist, for an evaluation to determine whether he had an employment-related hearing loss. Dr. Bikhazi evaluated appellant on June 2, 2005 and obtained an audiogram. The audiogram reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 15, 15, 15 and 35, respectively and on the right of 15, 15, 15 and 20, respectively.² He diagnosed “bilateral high frequency sensorineural hearing loss due to firearm exposure wounds while in the service of the [employing establishment] with no tinnitus.” Dr. Bikhazi determined that appellant did not require hearing aids at the present time.

In an amended report dated June 30, 2005, Dr. Bikhazi related that appellant “does have bilateral tinnitus, in all likelihood related to his noise-induced hearing loss.”

By letter dated June 13, 2005, the Office notified appellant that his claim was accepted for bilateral high frequency sensorineural hearing loss.

On July 11, 2005 an Office medical adviser reviewed Dr. Bikhazi’s report and audiometric test results and concluded that appellant did not have a ratable impairment of either ear. He noted that the Office accepted that appellant was exposed to noise levels over 85 decibels during the course of his federal employment. The Office medical adviser found that the earliest audiogram of record showed “a mild bilateral high frequency hearing loss” and that his subsequent audiograms “confirm a progressive bilateral high frequency hearing loss.” He reviewed the report and audiogram by Dr. Bikhazi and diagnosed “bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss due to noise exposure.” The Office medical adviser concluded that appellant did not have a ratable impairment of either ear.

On August 3, 2005 the Office informed appellant that it had revised his accepted condition to an aggravation of bilateral high frequency sensorineural hearing loss.

By decision dated October 21, 2005, the Office denied appellant’s claim for a schedule award on the grounds that his hearing loss was not ratable.

¹ Appellant retired on December 31, 2004.

² Testing for the left ear at 3,000 cps revealed a decibel loss of 40 rather than 35 and testing for the right ear at 2,000 cps and 3,000 cps revealed decibels losses of 10 and 15 rather than 15 and 20.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. 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 determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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*, (5th ed. 2001) (A.M.A., *Guides*), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.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

In order to establish a work-related loss of hearing, the Office requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Office procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical

³ 5 U.S.C. §§ 8101-8193.

⁴ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.¹⁰

Regarding tinnitus, the A.M.A., *Guides* states:

“Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living.”¹¹

ANALYSIS

The Office medical adviser properly applied the Office’s standardized procedures to the June 2, 2005 audiogram performed for Dr. Bikhazi.¹² Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 15, 10 and 15 respectively. These decibel losses were totaled at 55 and divided by 4 to obtain the average hearing loss per cycle of 13.75. The average of 13.75 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the right ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 15, 15 and 40 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss per cycle of 21.25. The average of 21.25 was then reduced by the 25 decibel fence to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Office medical adviser thus properly found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides*.

The Board finds that the Office medical adviser applied the proper standards to the June 2, 2005 audiogram. The result is a nonratable hearing loss bilaterally. The Board further finds that the Office medical adviser properly relied upon the June 2, 2005 audiogram as it was part of Dr. Bikhazi’s evaluation and met all the Office’s standards.¹³

On appeal, appellant argues that the Office medical adviser erroneously referred to Dr. Bikhazi’s examination as occurring on June 5, 2005 rather than June 2, 2005. This appears, however, to be a typographical error and does not affect the disposition of the case.

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994); see also *Luis M. Villanueva*, 54 ECAB 666 (2003).

¹¹ A.M.A., *Guides* 246.

¹² While the record contains prior audiograms taken by the employing establishment, there is insufficient information accompanying the audiograms to demonstrate that they meet the Office’s standards for audiograms used in the evaluation of permanent hearing impairment. See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994). The Office does not have to review every uncertified audiogram which has not been prepared in connection with an examination by a medical specialist. *Joshua A. Holmes*, 42 ECAB 213, 236 (1990).

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

Appellant additionally notes that the Office medical adviser did not specifically refer to the audiograms conducted on behalf of the employing establishment and did not consider that he was exposed to noise over 156 decibels. In his report, however, the Office medical adviser noted appellant's history of progressive hearing loss as demonstrated by the audiograms. He referred to appellant's noise exposure as in excess of 85 decibels as it is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 decibels.¹⁴ Further, as noted, the Office medical adviser properly relied upon the June 2, 2005 audiogram as it met the Office's standards.¹⁵

Appellant also contends that the Office medical adviser failed to address his tinnitus. The A.M.A., *Guides*, provides that tinnitus, in the presence of unilateral or bilateral hearing impairment, may impair speech discrimination and provides for up to a five percent rating for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform activities of daily living.¹⁶ In this case, however, appellant's hearing loss is not ratable. Accordingly, the Board finds that he is not entitled to a schedule award for tinnitus.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.

¹⁴ *Id.* at Chapter 3.600.8(a).

¹⁵ *Id.*

¹⁶ A.M.A., *Guides* 246; *Juan A. Trevino*, 54 ECAB 356 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2005 is affirmed.

Issued: May 11, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board