United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 06-1404**
	)	**Issued: October 6, 2006**
DEPARTMENT OF THE NAVY, NAVAL AIR DEPOT, Cherry Point, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 3, 2006 denying his claim for a schedule award. Pursuant to 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 hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On December 29, 2005 appellant, then a 38-year-old instrument mechanic, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his employment. His supervisor indicated that he was last exposed to the factors to which he attributed his hearing loss on December 29, 2005 and noted that he was retiring effective January 2, 2006.

The record contains audiograms dated 1985 to 1994 conducted as part of annual examinations for the employing establishment. Appellant also submitted a detailed description of his noise exposure during the course of his federal employment from 1967 until 2005 and an audiogram dated January 23, 2006.

By letter dated March 21, 2006, the Office referred appellant to Dr. Robert Hosea, a Board-certified otolaryngologist, for an evaluation to determine whether he had an employment-related hearing loss. Dr. Hosea obtained an audiogram on March 23, 2006. 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, 10 and 20, respectively and on the right of 10, 15, 10 and 15, respectively.[1] Dr. Hosea diagnosed very high frequency neurosensory hearing loss due to noise exposure during the course of appellant's federal employment. He opined that appellant required no treatment at this time but should prevent further exposure to loud noise.

On March 29, 2006 an Office medical adviser reviewed Dr. Hosea's report and audiometric test results and diagnosed bilateral sensorineural hearing loss. He concluded that appellant did not have a ratable impairment of either ear.

By decision dated April 3, 2006, the Office accepted appellant's claim for bilateral hearing loss but found that he was not entitled to a schedule award because his hearing loss was not ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] 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 results 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.[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 cps, the losses at each frequency are added up and averaged.[5] The remaining amount is multiplied by a factor of

[1] Dr. Hosea did not include the results for bone conduction testing on the left ear but a review of the accompanying audiogram reveals that the results were obtained and did not reveal a significant air-bone gap.

[2] 5 U.S.C. §§ 8101-8193.

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

[4] A.M.A., *Guides* 250.

[5] *Id*.

1.5 to arrive at the percentage of monaural hearing loss.[6] 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.[7] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[8]

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 Otolaryngologist 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 opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.[9]

ANALYSIS

In support of his claim for an employment-related loss of hearing, appellant submitted an audiogram dated January 23, 2006. This evidence, however, did not meet the Office's criteria to establish an employment-related loss of hearing as the audiogram was not certified by a physician as accurate and there is no information regarding whether the audiometric testing met the Office's standards for calibration.[10] The Office referred appellant to Dr. Hosea for a second opinion examination. Based on Dr. Hosea's report, the Office accepted appellant's claim for bilateral hearing loss.

[6] *Id*.

[7] *Id*.

[8] *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

[9] *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).

[10] *Id*.

An Office medical adviser reviewed the otologic and audiologic testing performed by Dr. Hosea and correctly applied the Office's standardized procedures to the March 23, 2006 audiogram.[11] Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 10 and 15 respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss per cycle of 12.50. The average of 12.50 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, 10 and 20 respectively. These decibel losses were totaled at 60 and divided by 4 to obtain the average hearing loss per cycle of 15. The average of 15 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 March 23, 2006 audiogram. The result is a nonratable hearing loss bilaterally.[12] The Board further finds that the Office medical adviser properly relied upon the March 23, 2006 audiogram as it was part of Dr. Hosea's evaluation and met all the Office's standards.[13]

CONCLUSION

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

[11] 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).

[12] To determine the binaural hearing loss, the lesser loss is multiplied by five and added to the greater loss and divided by six. Appellant has a zero percent binaural hearing loss.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 3, 2006 is affirmed.

Issued: October 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board