

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

W.C., Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, GA, Employer**

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**Docket No. 06-1549
Issued: October 5, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2006 appellant filed a timely appeal from the May 26, 2006 merit decision of the Office of Workers' Compensation Programs, which denied his claim for a schedule award and denied authorization for hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant has a ratable hearing loss, entitling him to a schedule award for hearing impairment; and (2) whether the Office properly denied authorization for hearing aids.

FACTUAL HISTORY

On January 24, 2006 appellant, then a 61-year-old aircraft mechanic, filed a claim alleging that the ringing in his ears was a result of his federal employment. The Office referred him, together with a statement of accepted facts, to Dr. Sean B. Peppard, an otolaryngologist, for evaluation.

On May 12, 2006 Dr. Peppard examined appellant and obtained an audiogram, the results of which he reported were valid and representative of appellant's hearing sensitivity. He diagnosed sensorineural hearing loss in the high-frequency range and tinnitus from cochlear damage from noise. Dr. Peppard indicated that this hearing loss was due at least in part to noise exposure encountered in appellant's federal employment. He explained that appellant had more hearing loss than would be expected with age and that appellant had sufficient noise exposure to cause cochlear damage. Dr. Peppard recommended the use of hearing protection and hearing aids.

On February 27, 2006 an Office medical adviser reviewed the May 12, 2006 audiogram obtained for Dr. Peppard and determined that appellant had no ratable hearing loss in either ear. With a checkmark, he indicated that hearing aids were not authorized.

In a decision dated May 26, 2006, the Office accepted appellant's claim for hearing loss but denied a schedule award for permanent impairment on the grounds that the loss was not severe enough to be considered ratable. The Office also found that the weight of the medical evidence established that appellant would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the losses at each frequency are added up and averaged. Then, a "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 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

³ A.M.A., *Guides* 250.

⁴ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS -- ISSUE 1

According to the audiogram obtained for Dr. Peppard on May 12, 2006, hearing thresholds in appellant's right ear at 500, 1,000, 2,000 and 3,000 cps were 15, 5, 15 and 40 decibels respectively, for a total of 75 and an average of 18.25. Hearing thresholds in his left ear at those same frequencies were 20, 10, 15 and 35 decibels respectively, for a total of 80 and an average of 20. Because both averages are below the "fence" of 25 decibels, no impairment is considered to exist in appellant's ability to hear everyday sounds under everyday listening conditions. The Office, therefore, properly accepted that, while appellant did sustain a loss of hearing in both ears as a result of his federal employment, the extent of that loss was not severe enough to represent a practical impairment. Such a loss -- described as "not ratable" or "nonratable" -- does not entitle appellant to a schedule award for permanent impairment under section 8107 of the Act.

The fifth 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 five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."⁵ The A.M.A., *Guides* advises, however, as follows:

"Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment."⁶

Because the objective data in this case demonstrates that appellant's impairment is not ratable, tinnitus, and its impact on his ability to perform daily activities, may not serve as the sole criterion for a determination of impairment. The Board has held that, if a claimant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus.⁷ The Board will therefore affirm the Office's May 26, 2006 denial of a schedule award.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any

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

⁶ *Id.*

⁷ *Juan A. Trevino*, 54 ECAB 358, 360 (2003).

monthly compensation.⁸ The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.⁹

ANALYSIS -- ISSUE 2

In its May 26, 2006 decision, the Office found that the weight of the evidence established that appellant would not benefit from hearing aids. The record, however, does not support this finding. Dr. Peppard, the Board-certified otolaryngologist to whom the Office referred appellant for otologic examination and audiometric evaluation, recommended hearing aids. The Office medical adviser indicated with a checkmark that they were not authorized. This is not sufficient evidence for a proper exercise of the Office's discretion. Further development is necessary to determine whether hearing aids are likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. The Board will set aside the Office's May 26, 2006 denial of authorization for hearing aids and remand the case for further development and an appropriate exercise of the Office's discretion under section 8103(a) of the Act.

CONCLUSION

The Board finds that appellant has no ratable hearing loss and is therefore not entitled to a schedule award for hearing impairment. The Board also finds that further development of the evidence is warranted on whether the Office should authorize hearing aids.

⁸ 5 U.S.C. § 8103(a).

⁹ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: October 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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