United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-525**
	)	**Issued: June 4, 2007**
DEPARTMENT OF THE NAVY, BATTALION THREE SAN CLEMENTE ISLAND STATION #10, San Diego, CA, 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 December 18, 2006 appellant filed a timely appeal from a November 20, 2006 merit decision of the Office of Workers' Compensation Programs that denied his claim for a schedule award for bilateral hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On January 5, 2006 appellant, then a 51-year-old retired federal firefighter, filed an occupational disease claim alleging that he developed bilateral hearing loss in the performance of duty. Appellant first became aware of his condition on August 17, 1979. The employing establishment noted that appellant was last exposed to workplace noise on December 2, 2005.

Appellant retired on January 2, 2006. The employing establishment provided audiograms and records of audiometric testing conducted between 1987 and 2005.

On February 8, 2006 the Office requested additional information concerning appellant's claim.

Appellant submitted a February 14, 2006 statement describing the sources of noise exposure to which he was exposed during his federal employment. He reported that from 1979 to 1987 he "worked in and around fire engines, aircraft, sirens, heavy machinery, small engines, crash trucks ... gas turbine fire pumps, etc." Appellant stated that from 1987 until 1991 he was "rotated ... on an almost daily basis" to the "structural fire station." Appellant indicated that from 1991 until his retirement in 2006 he was assigned to a "structural fire station" but was rotated, based on need, to the "crash station," where he was exposed to aircraft noise. Appellant explained that he supplied his own hearing protection and was also provided with hearing protection by the employing establishment but he often could not use it because it interfered with his ability to hear critical commands during emergencies. The employing establishment submitted a March 8, 2006 statement explaining that appellant was exposed to noise from fire engines, turbine powered pumps, aircraft, power equipment, sirens and air horns. The employing establishment indicated that it provided hearing protection equipment, but that until 2005 employees had to remove hearing protection to hear radio commands.

By letter dated April 12, 2006, the Office referred appellant, together with a statement of accepted facts, to Dr. Phillip Daspit, a Board-certified otolaryngologist, for a second opinion. Dr. Daspit examined appellant on April 25, 2006. In a May 2, 2006 report, he detailed the results of his examination and concluded that appellant had bilateral sensorineural hearing loss that was "definitely related to the federal employment." However, Dr. Daspit noted that the extent of appellant's hearing loss was "0 percent on both ears and 0 percent binaural. This is primarily because the hearing testing done and the speech frequencies were essentially normal except for one frequency." An audiogram performed on April 25, 2006 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following decibel losses: 5, 10, 25 and 45 for the right ear and 10, 5, 20 and 45 for the left ear.

On May 10, 2006 the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On May 17, 2006 Dr. Brian Schindler, a Board-certified otolaryngologist and an Office medical consultant, reviewed Dr. Daspit's audiometric test results. He concurred with Dr. Daspit that appellant's hearing loss was employment related. However, under the Office's standard formula for evaluating hearing loss, appellant's hearing loss was not ratable for schedule award purposes.

By decision dated November 20, 2006, the Office denied a schedule award, finding that his hearing loss was not ratable. The Office noted that appellant remained entitled to appropriate medical treatment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] 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 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 cps, 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 evaluating hearing loss.[9]

ANALYSIS

The Office accepted that appellant sustained an employment-related bilateral sensorineural hearing loss. However, it denied his claim for a schedule award as the extent of his hearing loss is not ratable.

In a May 17, 2006 report, Dr. Schindler, an Office medical consultant, applied the Office's standardized procedures to the April 25, 2006 audiogram performed for Dr. Daspit.

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (2002).

[3] *Id.*

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

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

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

Appellant's April 25, 2006 audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 5, 10, 25 and 45 for the right ear. The total decibel loss in the right ear is 85 decibels. When divided by 4, the result is an average hearing loss of 21.25 decibels. The average loss of 21.25 decibels is reduced by the "fence" of 25 decibels to equal -3.75 decibels, which when multiplied by the established factor of 1.5, results in a -5.625 percent monaural hearing loss for the right ear, rounded to 0 percent.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 20 and 45 decibels respectively, for a total decibel loss of 80 decibels. When divided by 4, the result is an average hearing loss of 20 decibels. The average loss of 20 decibels is reduced by the "fence" of 25 decibels, to equal -5 decibels, which when multiplied by the established factor of 1.5, results in a -7.5 percent monaural hearing loss for the left ear, rounded to 0 percent.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Daspit's May 2, 2006 report and accompanying April 25, 2006 audiogram. The result is a zero percent monaural and binaural hearing loss, which is not ratable. Therefore, appellant's hearing loss is not compensable for schedule award purposes.

On appeal, appellant asserts that the Office's standard formula for evaluating hearing losses should not apply as each individual is different. However, to be fair to all claimants, the Office has adopted the use of a single set of tables so that there may be uniform standards applicable to all claimants. Applying these standards to the audiogram obtained by Dr. Daspit revealed that appellant does not have a ratable hearing loss.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2007
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