

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

L.B., Appellant)	
)	
and)	Docket No. 07-2341
)	Issued: March 18, 2008
DEPARTMENT OF AGRICULTURE, FOOD)	
SAFETY & INSPECTION SERVICE, Green)	
Bay, WI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2007 appellant filed a timely appeal from the July 24, 2007 decision of the Office of Workers' Compensation Programs denying him a schedule award for his employment-related hearing loss. 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 established that he has a ratable employment-related loss of hearing thereby entitling him to a schedule award.

FACTUAL HISTORY

On July 26, 2006 appellant, then a 58-year-old consumer safety inspector, filed an occupational disease claim, Form CA-2, alleging that his hearing loss was caused by the high levels of noise in the slaughter houses and processing plants where he worked. He began working for the employing establishment in 1973. Appellant was exposed to a wide variety of

loud machinery, including grinders, blenders, chopper, linkers, air lines, steam lines and drive motors. His supervisor, Richard Trudeau, stated that his assignments for the previous two years included facilities with machine noise levels in excess of 85 decibels. Mr. Trudeau indicated that appellant wore hearing protection when exposed to these noise levels. The employing establishment provided audiograms.

On December 5, 2006 Dr. Mark Reinke, a Board-certified otolaryngologist, reported on his December 4, 2006 evaluation of appellant's hearing. Appellant reported difficulty hearing in crowds and casual conversation. He denied tinnitus, otalgia, otorrhea, vertigo and family hearing loss, but stated that he did have recreational loud noise exposure with deer hunting and chainsaw use. Appellant reported that he had worked around heavy machinery since 1967, but did not wear hearing protection until 1985. On examination, Dr. Reinke found that appellant's ear canals were normal and the tympanic membranes were intact. The tuning fork tests were normal. Dr. Reinke noted that an audiogram showed mild sensorineural hearing loss bilaterally, left greater than right. He found that appellant had a 0 percent hearing loss on the right, a 5.6 percent loss on the left, and a total binaural impairment of 0.9 percent. Dr. Reinke opined that, given the extensive history of occupational noise exposure and the nature of appellant's hearing loss, a portion of the hearing loss was employment related.

On February 7, 2007 appellant was referred for a second opinion examination. On March 9, 2007 Dr. Robert Prehn reviewed appellant's medical records and factual history. He noted that appellant had worked around extremely loud equipment in his federal employment since 1973 and that he used no hearing protection prior to 1985. Appellant, who is a left-handed shooter, reported that he discharged his hunting rifle five to six times a year and that he used a chainsaw. On physical examination, Dr. Prehn found no abnormalities in the aural cavity or tympanic membranes. The audiogram that was performed on March 9, 2007 showed high frequency binaural hearing loss, left worse than right. Dr. Prehn opined that appellant's noise exposure was the primary cause for his hearing loss. He noted that the asymmetrical left side losses were unusual, but could be caused by the intensity of the noise to which appellant was exposed. Dr. Prehn stated that appellant's hearing loss was permanent and would not improve, but that hearing aids were not yet necessary.

By decision dated May 24, 2007, the Office accepted appellant's claim for bilateral sensorineural hearing loss. The Office referred his claim to an Office medical adviser for a determination on his entitlement to a schedule award.

On May 28, 2007 Dr. David Garelick, the Office medical adviser, reviewed appellant's records and opined that the extent of hearing loss was over that which would be expected due to presbycusis and was related to his federal employment. He noted that the March 5, 2007 audiogram, which measured hearing losses at 500, 1,000, 2,000 and 3,000 hertz (Hz), revealed right ear losses of 10, 20, 20 and 25 decibels and left ear losses of 15, 20, 20 and 40 decibels, respectively. Utilizing the hearing loss impairment formula from the American Medical Association, *Guides to the Evaluation of Permanent Employment* (5th ed. 2001), Dr. Garelick found zero percent binaural sensorineural hearing loss. He stated that the date of maximum medical improvement was March 5, 2007.

By decision dated July 24, 2007, the Office denied appellant's claim for a schedule award. The Office found that appellant's hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations 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.¹ However, the Act does not specify the manner in which the percentage of loss is to 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.⁴ 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.⁵ The remaining amount is multiplied by a factor of 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

ANALYSIS

Appellant provided the Office with the December 5, 2006 report of Dr. Reinke, a Board-certified otolaryngologist, who found that he had 5.6 percent hearing loss in the left ear. The report was not accompanied by any audiogram or audiometric calibration information, both of

¹ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.404.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* 246-51 (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)* Docket No. 01-1570 (issued August 13, 2002).

which are required under Office procedures.⁹ For this reason, the impairment rating of Dr. Reinke is of diminished probative value. Office procedures state that referral to a qualified specialist for examination is appropriate when medical evidence submitted by the claimant does not meet the requirements for adjudication. Because Dr. Reinke's report was not sufficient to establish the extent of appellant's hearing impairment, the Board finds that the Office properly referred appellant for a second opinion.¹⁰

Dr. Prehn, a Board-certified otolaryngologist, examined appellant on March 9, 2007. He submitted a well-rationalized medical report based on a complete factual and medical history. The report included all the information and documentation required by the Office procedures. Dr. Prehn concluded that the audiogram demonstrated a high frequency bilateral hearing loss, with the left ear worse than the right ear. He noted that appellant's hearing loss was caused primarily by noise exposure and that it was permanent and would not improve. The Board finds that the medical opinion of Dr. Prehn carries the weight of the medical evidence.

Based on Dr. Prehn's opinion, the Office accepted appellant's hearing loss claim. It referred the medical record to Dr. Garelick, an Office medical adviser, who he reviewed Dr. Prehn's report and properly utilized the A.M.A., *Guides* to determine whether appellant had a compensable hearing loss. Dr. Garelick added the right ear decibel losses recorded at 500, 1,000, 2,000 and 3,000 Hz, which were 10, 20, 20 and 25 decibels, respectively, for a total loss of 75 decibels. When divided by four, the result was an average hearing loss of 18.75 decibels. The average loss was then reduced by the "fence" of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5 resulted in a 0 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed leveled losses of 15, 20, 20 and 40 decibels, respectively, for a total of 95 decibels. When divided by four, the result was an average hearing loss of 23.75 decibels. The average loss was then reduced by the "fence" of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5 resulted in a 0 percent monaural hearing loss for the left ear. Consequently, the evidence of record establishes that appellant has no ratable hearing loss in either ear. The Board finds that the Office properly determined that appellant was not entitled to a schedule award as his hearing loss was not significant enough to be ratable.

CONCLUSION

The Board finds that the Office properly determined that appellant's employment-related hearing loss is not ratable and, therefore, he is not entitled to a schedule award.

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8 (September 1996) (explaining the requirements for the audiometric and otologic examinations and documentation suitable for establishing a hearing loss claim under the Act).

¹⁰ *Vernon Brown*, 54 ECAB 376 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2007 is affirmed.

Issued: March 18, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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