

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

C.H., Appellant)

and)

DEPARTMENT OF THE ARMY,)
INSTALLATION MANAGEMENT)
COMMAND, WHITE SANDS MISSILE)
RANGE, White Sands, NM, Employer)

**Docket No. 08-134
Issued: May 19, 2008**

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 October 17, 2007 appellant filed a timely appeal from a September 25, 2007 Office of Workers' Compensation Programs' decision which found that his employment-related hearing loss was not ratable for schedule award purposes. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's schedule award.

ISSUE

The issue is whether appellant has a ratable hearing loss thereby entitling him to a schedule award.

FACTUAL HISTORY

On December 14, 2004 appellant, then a 57-year-old electrician, filed an occupational disease claim alleging that he sustained a hearing loss due to factors of his federal employment. He first became aware of his hearing loss on July 14, 2004 and realized that it was caused by his

federal employment on December 5, 2004. Appellant indicated that he was exposed to noise from running machinery, drills and other noisy equipment used to perform his work. He submitted audiograms from the employing establishment from 1965 to 2004.

The Office referred appellant, together with a statement of accepted facts, to Dr. Gary Nanez, a Board-certified otolaryngologist, for an examination. In a March 14, 2005 report, Dr. Nanez opined that appellant sustained a hearing loss that was due to his federal employment. The accompanying March 14, 2005 audiogram, which listed a calibration date of March 20, 2005, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps).

On April 29, 2005 an Office medical adviser, advised that appellant reached maximum medical improvement on March 14, 2005. He applied the Office standards for evaluating the extent of hearing loss to Dr. Nanez's March 14, 2005 audiogram and found a nonratable binaural hearing loss. Since the audiometer calibration date of March 20, 2005 was after appellant's audiogram of March 14, 2005, the Office medical adviser recommended that the Office clarify whether the audiometric equipment was properly calibrated.

By decision dated May 13, 2005, the Office accepted appellant's claim for a binaural hearing loss. It advised appellant that it was awaiting clarification from Dr. Nanez so that the percentage of permanent employment-related hearing loss could be assessed. In a May 17, 2005 response, Dr. Nanez's office advised that the audiometer was not properly calibrated when appellant's testing was performed. Thereafter, the Office referred appellant, together with a statement of accepted facts, to Dr. Twana L. Sparks, a Board-certified otolaryngologist, for an examination.

In a June 22, 2005 report, Dr. Sparks opined that appellant's binaural hearing loss was not due to factors of his federal employment as the pattern of loss was not consistent with a noise-induced loss. She found that appellant had a nonratable binaural hearing loss and hearing aids were not recommended. The accompanying June 22, 2005 audiogram, which listed a calibration date of March 15, 2005, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps and revealed decibel losses on the left of 10, 10, 10 and 20, respectively and on the right of 10, 10, 10 and 25, respectively.

On January 3, 2006 appellant filed a claim for a schedule award.

In an April 19, 2006 report, an Office medical adviser reviewed the medical evidence. He opined that appellant reached maximum medical improvement on June 22, 2005, the date of Dr. Spark's report. The Office medical adviser applied the American Medical Association, *Guides for the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), to find that appellant had a zero percent binaural hearing loss. He further noted that Dr. Spark's opinion that appellant's hearing loss was not employment related was contrary to Dr. Nanez's opinion on causal relationship.

The Office referred appellant, together with a statement of accepted facts and the complete file, to Dr. Rafael Garcia, a Board-certified otolaryngologist, for examination. In an August 22, 2006 report, Dr. Garcia advised that a comprehensive hearing test, which was

performed on August 10, 2006, revealed essentially normal hearing sensitivity with a mild-to-moderate sensorineural hearing loss at the high frequencies beyond 6,000 Hertz. He advised that there was no need for hearing aids and a hearing test should be repeated in two years. The accompanying August 10, 2006 audiogram, which did not list a calibration date, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps and revealed decibel losses on the left of 10, 5, 15 and 20, respectively and on the right of 15, 10, 10 and 20, respectively. In a subsequent report of January 23, 2007, Dr. Garcia opined that appellant's high frequency hearing loss was secondary to prolonged noise exposure in his federal employment.

In a February 28, 2007 report, an Office medical adviser reviewed the medical record. He opined that appellant reached maximum medical improvement on August 10, 2006 and his noise exposure on the job was sufficient to be a contributing factor to his hearing loss. The Office medical adviser determined that, based on the results of the August 10, 2006 audiogram, appellant had a binaural hearing loss of zero percent. He advised that hearing aids were not authorized. The Office medical adviser noted, however, that his opinion could not be considered valid until a calibration date was obtained from Dr. Garcia.

In a July 18, 2007 letter, the audiologist who performed appellant's hearing test for Dr. Garcia advised that the audiometer had been calibrated on April 28, 2006, prior to the August 10, 2006 evaluation.

In a September 13, 2007 addendum report, the Office medical adviser stated that appellant did not have a ratable hearing loss.

By decision dated September 25, 2007, the Office accepted appellant sustained hearing loss due to his employment-related noise exposure. However, the extent of his hearing loss was not severe enough to be ratable for schedule award purposes. The Office also found that he would not benefit from hearing aids and denied additional medical benefits. The Office noted that this decision superseded its May 13, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees Compensation Act¹ and its implement regulations² 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. The Act, however, does not specify the manner in which the percentage loss of a member 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 A.M.A., *Guides* (5th ed.) has been adopted by the Office for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ See 20 C.F.R. § 10.404; see also *David W. Ferrall*, 56 ECAB 362 (2005).

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

To determine the nature and extent of appellant's hearing loss, the Office developed the medical evidence. It first referred appellant to Dr. Nanez who found that appellant's occupational noise exposure contributed to a binaural hearing loss. However, the audiometric testing obtained for Dr. Nanez was not properly calibrated.¹⁰ Thereafter, the Office referred appellant to Dr. Sparks. The Office subsequently referred appellant to Dr. Garcia.

In reports dated August 22, 2006 and January 23, 2007, Dr. Garcia found that appellant had a sensorineural hearing loss pattern characteristic of noise-related loss. He advised that the history of workplace noise exposure was sufficient to have caused the loss but that the August 10, 2006 audiogram resulted in a zero percent binaural impairment. Hearing aids were not recommended. In a July 18, 2007 letter, the audiologist who performed appellant's audiometric evaluation on August 10, 2006 advised that the audiometer had been calibrated on April 28, 2006.

The Board finds that appellant is not entitled to a schedule award based on his accepted binaural hearing loss. The August 10, 2006 audiogram results of Dr. Garcia do not demonstrate a ratable hearing loss. This audiogram recorded values at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 10, 5, 15 and 20 decibels in the left ear for a total of 50 decibels. This figure, when divided by 4, results in an average hearing loss of 12.5 decibels. The average of 12.5 decibels, when reduced by the 25 decibel fence, results in a 0 percent monaural hearing loss

⁴ A.M.A., *Guides* 250.

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).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.a (September 1994); Exhibit 4 (September 1996).

to the left ear. The frequency values on the right at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 10 and 20, for a total of 55 decibels. This figure, when divided by 4, results in an average hearing loss of 13.75 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss in the right ear. Therefore, the August 10, 2006 audiogram does not demonstrate that appellant's hearing loss is ratable. Appellant is not entitled to a schedule award for his accepted hearing loss.¹¹ The Board further notes that Dr. Garcia found that appellant had no need for hearing aids and the Office medical adviser agreed. Thus, the record supports that hearing aids are not necessary at this time and the Office properly denied appellant's claim for additional medical benefits.

CONCLUSION

The Board finds that appellant did not establish that he has a ratable hearing loss. The Board also finds that appellant is not entitled to any additional medical benefits he would not benefit from hearing aids at this time.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 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

¹¹ The Board, however, has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he or she may apply for a schedule award for any ratable impairment. *See Robert E. Cullison*, 55 ECAB 570 (2004).