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J.D., Appellant	)	
	)	
and	)	Docket No. 08-1875
	)	Issued: January 28, 2009
	)	
DEPARTMENT OF THE ARMY, ARMY	)	
NATIONAL GUARD, Symrna, TN, Employer	)	
	)	

Case Submitted on the Record

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

On June 23, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 10, 2008 which granted him a schedule award for a six percent bilateral hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

The issue is whether appellant has more than a six percent bilateral hearing loss for which he received a schedule award.

On November 19, 2007 appellant, then a 50-year-old sheet metal mechanic, filed a claim alleging that he developed a hearing loss due to his federal employment. He became aware of

his hearing loss in February 24, 1997 and continued to be exposed to noise at his federal employment until his termination on November 23, 2007.¹

By letter dated December 3, 2007, the Office advised appellant of the evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency levels, period of exposure and any hearing protection provided.

The employing establishment submitted a statement from Mark T. Copen, aircraft mechanic supervisor, who noted that appellant's job sites included the flight line and the prop and rotor shop. Mr. Copen advised that appellant was exposed to noise from helicopters one to two hours per day, four days per week. Appellant was also exposed to noise from drills, grinders, hammers and various hand tools. Mr. Copen noted that hearing protection was provided in the form of full earmuff protection and devices inserted into the ear. The employing establishment submitted audiograms dated April 31, 1975 to January 5, 1999.

By letter dated March 4, 2008, the Office referred appellant and a statement of accepted facts to Dr. Jeffrey A. Paffrath, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. Dr. Paffrath performed the otologic examination of appellant on May 9, 2008 and an audiometric evaluation was conducted on his behalf on that date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 5, 15, 45 and 45 decibels; left ear 10, 15, 55 and 60 decibels. Dr. Paffrath determined that appellant sustained bilateral sensorineural hearing loss which was causally related to noise exposure at work. He noted significant hearing loss from the 1978 audiogram revealed the left ear hearing was much more normal than the full audiogram to the 1993 report. Dr. Paffrath opined that the sensorineural hearing loss was at least in part due to the noise exposure encountered in appellant's employment. He recommended a hearing aide evaluation and placement bilaterally, hearing conservation techniques and yearly audiograms.

On May 16, 2008 an Office medical adviser reviewed Dr. Paffrath's report and the audiometric test of May 9, 2008. He concluded that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant had a six percent bilateral sensorineural hearing loss. The medical adviser noted that the condition found on examination on May 9, 2008 was aggravated by conditions of federal employment and diagnosed bilateral high frequency hearing loss, consistent in part with hearing loss due to noise exposure. Dr. Paffrath also recommended authorizing a trial of bilateral hearing aids.

In a decision dated May 20, 2008, the Office accepted appellant's claim for bilateral noise-induced hearing loss.

In a decision dated June 10, 2008, the Office granted appellant a schedule award for a six percent bilateral hearing loss. The period of the award was from May 9 to July 31, 2008.

¹ The record reveals that appellant was terminated due to loss of compatible military membership at age 60.

² A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

The Office properly referred appellant to Dr. Paffrath regarding his hearing loss. An Office medical adviser reviewed Dr. Paffrath's findings and concluded that appellant's hearing loss was aggravated by his employment. The medical adviser applied the Office's standardized procedures to the May 9, 2008 audiogram performed for Dr. Paffrath. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 5, 15, 45 and 45 respectively. These decibels were totaled at 110 and were divided by 4 to obtain an average hearing loss at those cycles of 27.50 decibels. The average of 27.50 decibels was then reduced

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 2.5, which was multiplied by the established factor of 1.5 to compute a 3.75 percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 10, 15, 55 and 60 respectively. These decibels were totaled at 140 and were divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The average of 35 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 10, which was multiplied by the established factor of 1.5 to compute a 15 percent monaural hearing loss for the left ear. The lesser loss of 3.75 is multiplied by 5, then added to the greater loss of 15 and the total is divided by 6 to arrive at the amount of the binaural hearing loss of 6 percent.

The Board finds that the Office medical adviser applied the proper standards to the May 9, 2008 audiogram. Under the Office's standardized procedures, there is no basis on which to grant more than a six percent binaural hearing loss.

CONCLUSION

The Board finds that the Office properly determined that appellant sustained a six percent bilateral sensorineural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2009
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