United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 10-2048**
	)	**Issued: June 7, 2011**
DEPARTMENT OF THE AIR FORCE, SHEPPARD AIR FORCE BASE, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 4, 2010 appellant filed a timely appeal from a February 19, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has ratable hearing impairment entitling him to a schedule award and whether he is entitled to hearing aids.

FACTUAL HISTORY

On February 10, 2009 appellant, then a 65-year-old air conditioning equipment mechanic, filed an occupational disease claim alleging that he sustained permanent hearing loss. He

[1] 5 U.S.C. § 8101 *et seq.*

became aware of his condition and its relationship to his employment on June 28, 2006. Appellant did not stop work.[2]

December 16, 1981 and May 2, 1985 audiograms exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 5, 15, 15 and 15 for the right ear and 20, 0, 5 and 5 for the left ear. At the same frequency levels, an August 7, 1998 reference audiogram from the employing establishment showed dBA losses of 10, 5, 10 and 20 for the right ear and 20, 15, 15 and 25 for the left ear.[3]

An April 10, 2009 statement of accepted facts detailed that appellant worked for the employing establishment since 1973 in a number of capacities, including plumber, maintenance technician and air conditioning equipment mechanic. During his tenure, he was exposed to loud noise generated by hand, power and machine tools, aircraft engines, forklifts, water pumps, air compressors and handlers, chillers and other heavy equipment between eight and nine hours each workday. Appellant began wearing earplugs and earmuffs on or around 1992.

On April 29, 2009 the Office referred appellant for a second opinion to Dr. Richard B. Dawson, a Board-certified otolaryngologist. In Dr. Dawson's May 20, 2009 report, appellant related that he initially noticed his binaural hearing loss around January 1989. Starting in 1982, he was exposed daily to a steady, high-frequency noise emitted by a 750-ton chiller unit for approximately seven years. Appellant did not use hearing protection during this period and denied having a preexisting condition. A May 19, 2009 audiogram obtained by Dr. Dawson exhibited dBA losses of 10, 15, 10 and 35 for the right ear and 15, 15, 10 and 40 for the left ear at 500, 1,000, 2,000 and 3,000 Hz. He examined appellant's ear canals and eardrums and observed that they were "essentially within normal limits." After reviewing the statement of accepted facts and audiometric data, Dr. Dawson noted a progression in high-frequency hearing loss after 1985, when appellant was regularly around the chiller unit. He opined that appellant's overall history of exposure "was probably sufficient as to intensity and duration to have caused the [condition.]" Dr. Dawson diagnosed bilateral, high-tone sensorineural hearing loss due to occupational noise exposure, adding that the loss exceeded what could normally be attributed to presbycusis. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[4] (A.M.A., *Guides*) (hereinafter) to the May 19, 2009 audiogram, he calculated that appellant did not have a ratable hearing loss. Dr. Dawson recommended hearing aids on the basis of appellant's "communication needs." He also recommended an annual hearing test to prevent further loss.

By decision dated June 4, 2009, the Office accepted appellant's claim for binaural hearing loss.[5] Appellant subsequently filed a claim for a schedule award on July 13, 2009.

[2] The record indicates that appellant retired, but does not specify the date of retirement.

[3] At frequencies of 4,000 and 6,000 Hz, the August 7, 1998 audiogram showed dBA losses of 40 and 30 for right ear and 45 and 30 for left ear.

[4] A.M.A., *Guides* (6th ed. 2008).

[5] On August 17 and 24, 2009 the Office also authorized hearing aids and related expenses.

On November 10, 2009 an Office medical adviser agreed with Dr. Dawson's conclusion that appellant's sensorineural hearing loss was caused by occupational noise exposure and identified May 19, 2009 as the date of maximum medical improvement. He applied the A.M.A., *Guides* standard to the May 19, 2009 audiogram and found no ratable hearing loss. The medical adviser recommended authorizing hearing aids.

By decision dated November 18, 2009, the Office denied appellant's claim for a schedule award as his hearing loss was not ratable. It also held that the weight of the medical evidence established that he would not benefit from hearing aids.

Appellant requested a review of the written record on December 10, 2009. He argued that the medical reports from Dr. Dawson and the Office medical adviser supported progressive, noise-induced hearing loss due to his employment and he was therefore entitled to a schedule award, hearing aids and annual hearing tests.

On February 19, 2010 an Office hearing representative affirmed the November 18, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Act[6] and its implementing regulations[7] 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. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.[8] 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 regulations as the appropriate standard for evaluating schedule losses.[9]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the "fence" of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech 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

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] 5 U.S.C. § 8107(c)(13).

[9] *Supra* note 7. *See also Mark A. Holloway*, 55 ECAB 321, 325 (2004).

the amount of the binaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[10]

Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.[11]

ANALYSIS

Appellant filed a claim for permanent hearing loss and the Office developed the matter by referring him to Dr. Dawson. After performing a physical examination and reviewing the statement of accepted facts and audiometric data, Dr. Dawson opined in a May 20, 2009 report that appellant sustained bilateral sensorineural hearing loss caused by occupational noise exposure. The Office medical adviser concurred with these findings on November 10, 2009. Both calculated that appellant did not have a ratable hearing loss, but prescribed hearing aids. The Office subsequently denied his claim for both a schedule award and additional medical benefits in a November 18, 2009 decision, which was later affirmed by an Office hearing representative.

As noted, Dr. Dawson and the Office medical adviser applied the Office's standard procedures to the May 19, 2009 audiogram. Under the Office's standardized procedures, appellant's left ear recorded losses of 15, 15, 10 and 40 dBA at 500, 1,000, 2,000 and 3,000 Hz. The total loss was 80 dBA. When divided by 4, the result was an average hearing loss of 20 dBA. The average hearing of 20 dBA was reduced by the fence of 25 dBA to equal 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the left ear. At the same frequency levels, appellant's right ear recorded losses of 10, 15, 10 and 35 dBA. The total loss was 70 dBA. When divided by 4, the result was an average hearing loss of 17.5 dBA. The average hearing of 17.5 dBA was reduced by the fence of 25 dBA to equal 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear. Since appellant did not sustain a ratable hearing loss in either ear, he was not entitled to a schedule award.

The Board finds, however, that appellant is entitled to hearing aids. The Office found in the November 18, 2009 decision that the weight of the medical evidence militated against his claim. The Office hearing representative adopted this reasoning in affirming the decision. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[12] Dr. Dawson's May 20, 2009 well-rationalized report determined that appellant sustained a nonratable, employment-related hearing loss but that binaural amplification was appropriate in view of appellant's communication needs. The Office medical adviser agreed

[10] *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

[11] *See J.B., id.*; *F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (March 2010).

[12] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *James Mack*, 43 ECAB 321, 329 (1991).

with Dr. Dawson and authorized hearing aids. Office records also indicate that the Office began the authorization process for hearing aids. By contrast, the Office's November 18, 2009 decision merely asserted that the evidence did not support a claim for additional benefits, but failed to provide any actual findings or reasoning in support of its conclusion. The Office hearing representative's decision did not provide further reasoning to support the Office's denial of hearing aids. In light of Dr. Dawson and the Office medical adviser's recommendation, the Board finds that appellant is entitled to hearing aids.

On appeal, appellant questions why his hearing loss is not ratable. As explained, the Office uses a uniform standard applicable to all claimants. The Office medical adviser applied these uniform standards to the audiogram obtained by Dr. Dawson and properly determined that appellant's hearing loss was ratable under these standards.[13]

CONCLUSION

The Board finds that appellant failed to establish that he sustained a ratable binaural hearing impairment. However, the Board finds that he is entitled to hearing aids.

[13] The Board notes that appellant submitted new evidence to the Office after issuance of the February 19, 2010 schedule award decision. Appellant also submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: June 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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