

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

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**JERRY W. THOMAS, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, ROBINS  
AIR FORCE BASE, GA, Employer**

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**Docket No. 04-801  
Issued: June 14, 2004**

*Appearances:*  
*Jerry W. Thomas, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On February 5, 2004 appellant filed a timely appeal from the January 22, 2004 decision, of the Office of Workers' Compensation Programs finding that he failed to establish a ratable hearing loss entitling him to a schedule award and that he was not entitled to additional medical benefits for his employment-related binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that he sustained a ratable hearing loss entitling him to a schedule award; and (2) whether appellant has established that he is entitled to additional medical benefits for his employment-related binaural hearing loss.

**FACTUAL HISTORY**

On June 24, 2003 appellant, then a 61-year-old scheduler, filed an occupational disease claim alleging that on July 22, 1996 he first became aware of his hearing loss which he attributed to his employment. Appellant stated that he was exposed to noises throughout his work at the

employing establishment. On the reverse of the claim form, Willie V. Bowman, an employing establishment supervisor, indicated that appellant was last exposed to conditions alleged to have caused his hearing loss on July 2, 2003. He stated that appellant did not miss work due to his claim. Mr. Bowman further stated that appellant performed scheduling duties in the landing gear shop in building 125.

Appellant's claim was accompanied by several documents including, a list of equipment, a description of the position of aircraft production controller and scheduler and a list of positions he held at the employing establishment and during his military service in which he was exposed to noise. A January 22, 1996 form report from Dr. Marvin E. Taylor, an employing establishment physician, indicated that appellant had a mild bilateral hearing loss. An investigative report from Mr. Bowman indicated that appellant worked in a designated "[n]oise [h]azardous [a]rea" daily during his tour of duty. Mr. Bowman reported that signs were posted which read "[n]oise [h]azardous [a]rea" throughout building 125 and employees were briefed during safety meetings about noise and the use of earplugs and other hearing protection. He stated that ear plugs were provided in all work areas. Appellant submitted a resume providing his work history.

By letter dated July 16, 2003, the Office advised the employing establishment that it had received appellant's claim and reviewed the information submitted along with it. The Office requested that the employing establishment submit additional factual information regarding appellant's exposure to noise and medical documentation pertaining to examinations for hearing or ear problems including, preemployment examinations and all audiograms.

In response, Henry S. Personius, deputy of bioenvironmental engineering flight at the employing establishment, stated in a June 17, 2003 letter that appellant began working for the employing establishment in 1981 after separation from the United States Air Force. Mr. Personius noted that appellant worked at the employing establishment as an aircraft mechanic and around C-5 and C-141 aircraft for approximately 17 years in building 125. He further noted that, from 1998 until his retirement in 2003, appellant's job was not directly related to hazardous noise areas, but he had to travel through posted hazardous noise areas and visit the landing gear shop in building 125 to perform job scheduling. Mr. Personius noted that hearing protection was provided in all work areas.

In an August 4, 2003 letter, Angela S. Williamson, an employing establishment licensed audiologist, noted that appellant was exposed to noise at the employing establishment from 1981 until 1997. She reported that in 1997 appellant's hearing was within normal limits with the exception of a drop to 35 decibels at 6,000 hertz in the left ear. Ms. Williamson noted that appellant was scheduled for an appointment at the employing establishment's audiology clinic, but he failed to keep the appointment. She opined that appellant did not suffer any hearing loss as a result of working with hazardous noise at the employing establishment. Ms. Williamson concluded that any loss noted after 1997 might be due to genetics, aging or disease.

By letters dated September 23, 2003, the Office referred appellant, together with a statement of accepted facts, to Dr. Christopher J. Mann, a Board-certified otolaryngologist, and Doug Lorber, an audiologist, for a second opinion medical examination and submitted an October 27, 2003 report in which he reviewed the statement of accepted facts and appellant's

medical records. He found no other history of any significant medical problems, head trauma, ear infections or ear surgery. Dr. Mann stated that he was unaware of any family history of significant hearing loss. He provided normal findings on physical examination and noted that appellant's audiogram indicated mild high frequency sensorineural hearing loss bilaterally that was slightly worse in the right ear compared to the left ear. He diagnosed a mild bilateral high frequency sensorineural hearing loss and opined that this condition was consistent with chronic noise exposure encountered in appellant's federal civilian employment. He stated that his opinion was supported by the progressive loss noted audiometrically while appellant had been exposed to this loud noise. Dr. Mann concluded that appellant did not appear to be a candidate for hearing aids at that time. He recommended that appellant maintain careful noise exposure avoidance by wearing hearing protection.

Dr. Mann's report was accompanied by Mr. Lorber's October 27, 2003 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 10, 10 and 20 respectively and in the left ear as 10, 10, 10 and 20 respectively.

By letter dated December 12, 2003, the Office advised appellant that his claim had been accepted for a binaural hearing loss. In a memorandum of the same date, the Office advised an Office medical adviser that appellant's claim had been accepted for binaural hearing loss. The Office requested that the Office medical adviser refer to Dr. Mann's October 27, 2003 report and calculate appellant's hearing impairment utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

On December 15, 2003 the Office medical adviser reviewed Dr. Mann's October 27, 2003 report and audiogram results. The Office medical adviser determined that appellant had a zero percent binaural sensorineural hearing loss and had reached maximum medical improvement on October 27, 2003. The Office medical adviser checked the block marked "no" in response to the question as to whether a hearing aid was authorized.

By decision dated January 22, 2004, the Office accepted appellant's claim for hearing loss due to his employment-related noise exposure, but found the evidence of record insufficient to establish that he had a ratable hearing loss based on the A.M.A., *Guides*. Accordingly, the Office determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act. The Office also determined that neither hearing aids, nor additional medical benefits were warranted.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

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.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.<sup>5</sup> 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.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> 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.<sup>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Office medical adviser applied the Office’s standardized procedures to the October 27, 2003 audiogram obtained by Dr. Mann. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 10 and 20 respectively. These decibel losses were totaled at 50 decibels and were divided by 4 to obtain an average hearing loss of 12.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

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<sup>3</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>4</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Donald E. Stockstad*, 53 ECAB \_\_\_\_ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted*, (modifying prior decision) Docket No. 01-1570 (issued August 13, 2002).

Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 10 and 20 respectively. These decibel losses were totaled at 50 decibels and were divided by 4 to obtain an average hearing loss of 12.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. Accordingly, the Office medical adviser calculated appellant's hearing loss under the Office standardized procedures to be nonratable for both the right and left ears.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Mann's October 27, 2003 report and accompanying audiogram. This resulted in a calculation of zero percent binaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable for schedule award purposes.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of the Act provides for furnishing to an employee injured in the performance of duty "the services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."<sup>10</sup> In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>11</sup> The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

Dr. Mann stated that appellant sustained an employment-related mild bilateral high frequency sensorineural hearing loss but that hearing aids were not recommended at that time. He recommended that appellant avoid exposure to noise by wearing hearing protection. The Office medical adviser checked the block marked "no" in response to the question as to whether a hearing aid was authorized. There is no medical evidence of record recommending that appellant be provided with a hearing aid or any other medical treatment for his employment-related hearing loss. Should the need for such medical care arise in the future, appellant may file an appropriate claim at that time.

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<sup>10</sup> 5 U.S.C. § 8103(a).

<sup>11</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>12</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts).

### **CONCLUSIONS**

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award. The Board further finds that appellant has failed to establish that he is entitled to additional medical benefits for his employment-related binaural hearing loss.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member