United States Department of Labor
Employees' Compensation Appeals Board

DONNIE F. ROLLINS, Appellant	)	
and	)	**Docket No. 04-1300**
	)	**Issued: September 20, 2004**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Donnie F. Rollins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

Appellant filed a timely appeal on April 19, 2004 of a March 26, 2004 decision of the Office of Workers' Compensation Programs finding that he had not established that he sustained a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.[1]

ISSUE

The issue is whether appellant established that he sustained a ratable hearing loss in the performance of duty.

FACTUAL HISTORY

On August 7, 2003 appellant, then a 53-year-old former pneudraulic systems mechanic, filed an occupational disease claim alleging that he sustained a bilateral high frequency hearing loss due to hazardous noise exposure in the performance of duty beginning in 1980, through his

[1] On appeal, appellant submitted additional evidence. The Board may not review evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

retirement from the employing establishment on January 16, 2003. He stated that he first became aware of the hearing loss and its possible relationship to occupational noise exposure in September 1981, after a period of exposure to small arms fire. Appellant worked as a small arms repair mechanic from 1980 to 1999 and as a hydraulics mechanic from March 1999 until January 2003, with exposure to hazardous noise from pneumatic tools and small arms fire. The employing establishment stated that beginning in 1980, appellant was exposed to noise from 78 to 92 decibels for 4 to 37 percent of the workday.[2] Appellant noted that he wore appropriate hearing protection when provided. He also noted nonoccupational exposure to hazardous noise from shooting hunting rifles.

Appellant submitted employing establishment audiometric results from January 20, 1987 to February 22, 2000, showing a gradually increasing bilateral high frequency hearing loss. Employing establishment physicians reviewing appellant's January 20, 1987 and February 2000 audiometric results, in comparison to unspecified audiograms performed prior to February 2000, noted a significant high frequency threshold shift.[3] Appellant also submitted March 17 and 18, 1987, April 10, 2000 and February 10, 2003 audiograms from a private audiology clinic showing bilateral high frequency hearing loss. These audiograms were not signed or reviewed by a physician.

The Office referred appellant to Dr. Robert Sciacca, a Board-certified otolaryngologist, for a second opinion examination. An audiogram was performed on Dr. Sciacca's behalf on March 4, 2004. This audiogram showed the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps): on the left, 5, 5, 5 and 30 decibels; on the right; 5, 5, 5 and 25 decibels. In a report of the same date, Dr. Sciacca noted appellant's exposure to hazardous noise during 20 or more years of federal employment, with a bilateral mild to severe high frequency hearing loss evident on a 1987 audiogram. He noted that appellant did not complain of tinnitus or vertigo and that tympanometry was normal. Dr. Sciacca diagnosed a bilateral mild to severe high frequency sensorineural hearing loss due to occupational hazardous noise exposure. He explained that the "severity of high frequency loss [was] consistent with hazardous noise exposure and not normal presbycusis."

On March 24, 2004 an Office medical adviser reviewed Dr. Sciacca's March 4, 2004 audiogram and report. On the right, the adviser totaled the losses of 5, 5, 5 and 25 decibels at the frequencies of 500, 1,000, 2,000 and 3,000 cps respectively to equal 40 decibels and divided the result by 4 to obtain the average hearing loss at those cycles of 10 decibels. The average of

[2] The statement of accepted facts states that appellant wore hearing aids beginning in 1980 to 1981. However, there is insufficient evidence of record to corroborate that appellant wore hearing aids at any time.

[3] In a January 20, 1987 report, Dr. Robert B. Andrews, an employing establishment osteopath, noted that a review of appellant's audiograms indicated a "Significant Threshold Shift (interval hearing loss) during the course of [his] employment" at the employing establishment. Dr. Andrews noted that the hearing loss could be permanent and cautioned appellant to use approved hearing protection in noise hazardous areas. In a February 22, 2000 report, Dr. Lisa A. Black, an employing establishment osteopath, stated that a series of February 2000 audiograms indicated a significant threshold shift warranting further audiometric testing. Neither physician observed a hearing loss that would be ratable under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

10 decibels was then reduced by 25 decibels to equal a 0 percent loss of hearing for the right ear. On the left audiometric testing at frequencies of 500, 1,000 2,000 and 3,000 cps revealed decibel losses of 5, 5, 5 and 30 decibels. These decibels were totaled at 45 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 11.25 decibels. The adviser then subtracted the fence of 25 decibels, resulting in a 0 percent loss of hearing for the left ear. The Office medical adviser thus determined that appellant had a zero percent binaural hearing loss according to the fifth edition of the A.M.A., *Guides*. The Office medical adviser found that appellant did not have a ratable impairment of either ear under the fifth edition of the A.M.A., *Guides* and did not require hearing aids.

By decision dated March 26, 2004, the Office accepted that appellant sustained a bilateral hearing loss induced by occupational noise exposure. However, the Office found that the hearing loss was not ratable under the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of members or functions of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. To ensure equal justice to all claimants and consistent results, good administrative practice necessitates the use of a uniform standard, a single set of tables applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard in evaluating schedule losses[6] as the uniform standard applicable to all claimants.[7]

The Office evaluates hearing loss in accordance with the standards set forth in the A.M.A., *Guides*.[8] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[9] Then, the "fence" of 25 decibels is subtracted from that total, because, as the A.M.A., *Guides* points out, losses below 25 decibels do not impair the ability to hear everyday speech under everyday conditions.[10] The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday

[4] 5 U.S.C. § 8107. *See generally* 5 U.S.C. §§ 8101-8193.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id.*

[7] *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002); *Jimmy B. Newell*, 39 ECAB 181 (1987).

[8] A.M.A., *Guides* at 250 (5th ed. 2001).

[9] *Id.*

[10] *Id.*

conditions.[11] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.[12] 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.[13] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[14]

ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the March 4, 2004 audiogram performed for Dr. Sciacca. Testing for the right ear at the frequency levels of 500 1,000 2,000 and 3,000 cps revealed decibel losses of 5, 5, 5 and 25 decibels. These decibels were totaled at 40 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 10 decibels. The average of 10 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal a 0 percent 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 decibel losses of 5, 5, 5 and 30 decibels. These decibels were totaled at 45 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 11.25 decibels. The adviser then subtracted the fence of 25 decibels, resulting in a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a zero percent binaural hearing loss.

The Board finds that the Office properly relied on Dr. Sciacca's opinion to rate appellant's hearing loss, as his report and audiogram were the sole report from a physician which fully complied with the Office's procedural requirements.[15] As set forth above, Dr. Sciacca properly evaluated appellant's hearing loss in accordance with the appropriate rating methods set forth in the fifth edition of the A.M.A., *Guides*.[16] In contrast, the employing establishment physicians' January 20, 1987 and February 22, 2000 reports reviewing employing establishment audiograms and audiometric results do not provide a schedule award rating according to the A.M.A., *Guides*. Also, the March 17 and 18, 1987, April 10, 2000 and February 10, 2003 audiometric results, audiograms and reports were not reviewed or signed by a physician and therefore do not constitute medical evidence.[17] Thus, the Office properly accorded Dr. Sciacca's opinion and rating of the weight of the medical evidence in this case.

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[11] *Id.*

[12] *Id.*

[13] *Id. See also Daniel C. Goings*, 37 ECAB 781, 784 (1986).

[14] *Donald E. Stockstaad*, 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).

[15] *James A. England*, 47 ECAB 115 (1995).

[16] A.M.A., *Guides* at 250 (5th ed. 2001).

[17] *Vickey C. Randall*, 51 ECAB 357 (2000).

Although appellant's claim for hearing loss was accepted, his hearing loss does not meet the criteria for ratability for a schedule award under the Act. Consequently, appellant is not entitled to a schedule award. Further, as there is no medical opinion indicating a need for hearing aids, appellant is not entitled to additional medical benefits.

CONCLUSION

The Board finds that appellant does not have a ratable loss of hearing causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2004 is affirmed.

Issued: September 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member