

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

RONALD L. COSTLOW, Appellant

and

**DEPARTMENT OF LABOR, MINE SAFETY &
HEALTH ADMINISTRATION, Johnston, PA,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1621
Issued: October 17, 2005**

Appearances:
Ronald L. Costlow, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 26, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 2, 2005, which found that he had no ratable hearing loss and was not entitled to a schedule award. The Office also found the evidence insufficient to establish the need for hearing aids. 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 the Office properly denied authorization for hearing aids.

FACTUAL HISTORY

On November 8, 2004 appellant, a 63-year-old coal mine inspector, filed an occupational disease claim alleging that he sustained a hearing loss caused by noise exposure while in the

performance of duty. Appellant was first aware of his condition on April 26, 1995 and reported his condition to his supervisor on April 26, 1995. Appellant retired effective January 3, 2005.

By letter dated December 13, 2004, the Office advised appellant of the evidence he needed to establish his claim. The Office requested that he submit his employment history for each position held and the source of noise, number of hours of exposure per day and the use of safety devices for protection. Appellant submitted a history of employment and noise exposure from 1995 to 2004, audiograms for the period November 27, 1973 to May 21, 2004 and a January 6, 2005 report by Dr. Barbara J. Connors,¹ a Board-certified internist and occupational medicine physician.

On February 24, 2005 the Office referred appellant, the record and a statement of accepted facts, to Dr. A. Leonard Zimmerman, a Board-certified otolaryngologist, for a second opinion. In a report dated April 13, 2005, Dr. Zimmerman obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps) for air conduction: on the left -- 15, 15 30 and 35 decibels and on the right -- 15, 10, 25 and 25 decibels. Dr. Zimmerman diagnosed mild-to-moderate high tone sensorineural hearing loss caused by work-related noise exposure. He explained that a comparison of audiograms dating back to 1973 demonstrated a progressive high tone sensorineural hearing loss consistent with noise exposure at work. Dr. Zimmerman indicated that hearing aids were not recommended as the hearing loss was not great enough at the present time, but recommended an annual audiometric evaluation.

On April 20 2005 an Office medical adviser reviewed the otologic and audiologic findings submitted by Dr. Zimmerman in accordance with the protocols of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.). He determined that appellant had a binaural hearing loss which was not ratable for schedule award purposes. The Office medical adviser checked the block marked no in response to the question as to whether a hearing aid was authorized and noted that appellant's hearing was excellent in normal speech frequencies.

The Office accepted appellant's claim for bilateral noise-induced hearing loss on April 29, 2005. By decision dated March 8, 2005, the Office denied appellant's schedule award claim, finding that the extent of hearing impairment was not ratable under the A.M.A., *Guides* (5th ed.). Further, the Office found that the weight of the medical evidence established that he would not benefit from hearing aids and, therefore, denied his claim for additional medical benefits.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act² and its implement regulation³ sets forth the number of weeks of compensation payable to employees

¹ Dr. Connors is employed by Federal Occupational Health a component of the U.S. Public Health Services.

² 5 U.S.C. §§ 8107.

³ 20 C.F.R. § 10.404.

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 of loss of a member shall be determined. For consistent results and to insure 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.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. Zimmerman’s November 16, 2004 report. Dr. Zimmerman reported that appellant had a mild-to-moderate high tone sensorineural hearing loss caused by his exposure to noise in his federal employment. However, he concluded that appellant’s hearing loss was not severe enough to require the use of hearing aids.

The Office medical adviser calculated the extent of hearing loss as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cps were 15, 10, 25 and 25 decibels which totaled 75 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 18.75 decibels. The average of 17.5 decibels was reduced by the “fence” of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cps were 15, 15, 30 and 35 decibels which totaled 95 decibels and divided by 4

⁴ See 20 C.F.R. § 10.404; see also *David W. Ferrall*, 56 ECAB ____ (Docket No. 04-2142, issued February 23, 2005).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (2002).

to obtain the average hearing loss at those frequencies of 23.75 decibels, which was reduced to 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

The Board finds that the evaluation performed by Dr. Zimmerman constitutes the weight of the medical evidence of record and establishes that the accepted employment-related hearing loss is not ratable under the protocols of the A.M.A., *Guides*.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹¹ The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.¹²

ANALYSIS -- ISSUE 2

Dr. Zimmerman opined that, although appellant sustained an employment-related bilateral sensorineural hearing loss, hearing aids were not recommended at that time. He recommended annual audiometric evaluations. After having reviewed Dr. Zimmerman’s report and accompanying audiogram, the Office medical adviser checked the block marked “no” in response to the question as to whether a hearing aid was authorized and added that appellant’s hearing was “excellent” in the normal speech frequencies. There is no medical evidence of record recommending that appellant be provided with hearing aids for his employment-related hearing loss. The Board finds that under these circumstances, the Office acted well within its discretion under section 8103(a) to deny authorization for hearing aids. Should the need for such medical care arise in the future, appellant may file an appropriate claim.

CONCLUSION

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 the Office properly denied authorization for hearing aids.

¹¹ 5 U.S.C. § 8103(a).

¹² *Delphia Y. Jackson*, 55 ECAB ____ (Docket No. 04-165, issued March 10, 2004). (The Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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