United States Department of Labor
Employees' Compensation Appeals Board

ROBERT W. LESTER, Appellant	)	
and	)	**Docket No. 06-268**
	)	**Issued: March 13, 2006**
DEPARTMENT OF THE NAVY, NAVAL AIR DEPOT, San Diego, CA, Employer	)	

Appearances:
Robert W. Lester, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 15, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 1, 2005 merit decision affirming a schedule award for hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 16 percent binaural hearing loss, for which he received a schedule award.

FACTUAL HISTORY

On October 16, 2003 appellant, then a 56-year-old retired aircraft planner and estimator, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to exposure to hazardous noise over the course of 34 years, including loud noise from aircraft

engines, industrial machines and power tools.[1] He retired from the employing establishment on January 3, 2003.

Appellant submitted several audiograms detailing his hearing condition between 1973 and 2003. Only the audiogram from March 3, 1983 was signed by a physician. In this audiogram, testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 5 and 55 respectively and testing for the right ear at the same frequency levels revealed decibel losses of 5, 5, 5 and 50 respectively.

Appellant also submitted a November 14, 2003 report in which Dr. Arnold G. Markman, an attending physician Board-certified in occupational medicine, stated that a September 11, 2003 audiogram showed significant high frequency sensorineural hearing loss and concluded that this hearing loss was due to his work for the employing establishment.[2]

In February 2004, the Office referred appellant to Dr. Theodore Mazer, a Board-certified otolaryngologist for evaluation of his hearing loss. In a report dated March 12, 2004, he concluded that appellant sustained a bilateral sensorineural hearing loss due to exposure to noise at the employing establishment. Dr. Mazer indicated that an audiogram was obtained on March 4, 2004 on equipment that was calibrated on February 2, 2004 and noted that the findings of the audiogram were accurate.[3] Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 20, 40 and 75 respectively and testing for the right ear at the same frequency levels revealed decibel losses of 20, 15, 45 and 70 respectively.

On April 20, 2004 an Office medical adviser reviewed the evaluation conducted by Dr. Mazer and agreed that appellant sustained a bilateral sensorineural hearing loss due to exposure to noise at the employing establishment. Based on the March 4, 2004 audiogram, he concluded that appellant had a 15 percent hearing loss in the left ear, an 18.8 percent loss in the right ear and a 16 percent binaural hearing loss.

The Office accepted that appellant sustained a bilateral sensorineural hearing loss due to exposure to noise at the employing establishment and he claimed that he was entitled to a schedule award for this loss.

By decision dated June 8, 2004, the Office granted appellant a schedule award for a 16 percent binaural hearing loss. The award ran for 32 weeks from March 4 to October 13, 2004.

[1] Appellant held several positions during this period, including sheet metal mechanic and aircraft overhaul and repair supervisor.

[2] The record contains a copy of the September 11, 2003 audiogram which does not appear to have been certified as accurate by a physician around the time it was obtained. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 30 and 75 respectively and testing for the right ear at the same frequency levels revealed decibel losses of 10, 10, 35 and 70 respectively.

[3] The record contains a copy of the March 4, 2004 audiogram and a calibration certificate.

Appellant requested a hearing before an Office hearing representative which was held on April 27, 2005. He provided additional details regarding his exposure to noise at work and the nature of his hearing loss.

Appellant submitted the findings of an audiogram which was obtained by an audiologist on May 17, 2005. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 35 and 55 respectively and testing for the right ear at the same frequency levels revealed decibel losses of 10, 15, 45 and 60 respectively. He also submitted a June 3, 2005 note in which Dr. Paul Bernstein, an attending otolaryngologist, stated, "I have evaluated the audiogram of this patient and consider him/her a candidate for a hearing aid(s)."[4] Appellant asserted that the May 17, 2005 audiogram showed a "10 decibel drop in ratable loss since that last audiogram 2 years ago."

By decision dated and finalized August 1, 2005, the Office hearing representative affirmed the June 8, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] sets 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[7]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[8] 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.[9] 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.[10] The remaining

[4] Appellant also resubmitted a copy of Dr. Markman's November 14, 2003 report. He asserted that Dr. Markman provided an opinion that appellant's binaural hearing loss exceeded 16 percent.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] *Id*.

[8] A.M.A., *Guides* 224-25 (4th ed. 1993); A.M.A., *Guides* at 226-51 (5th ed. 2001).

[9] *Id.*

[10] *Id*.

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

ANALYSIS

The Office accepted that appellant sustained an employment-related binaural hearing loss and granted him a schedule award for a 16 percent binaural hearing loss. Appellant contends that he sustained a higher degree of hearing loss.

On April 20, 2004 the Office medical adviser reviewed the otologic and audiologic testing performed on March 4, 2004 by Dr. Mazer, a Board-certified otolaryngologist, and applied the Office's standardized procedures to this evaluation.[14] Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of and 5, 20, 40 and 75 respectively. These decibel losses were totaled at 140 decibels and were divided by 4 to obtain the average hearing loss of 35 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 10 which was multiplied by the established factor of 1.5 to compute a 15 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 15, 45 and 70 respectively. These decibel losses total 150 decibels and when divided by 4 result in an average hearing loss of 37.5 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 12.5 which when multiplied by the established factor of 1.5 to equals a 18.8 percent hearing loss in the right ear.[15] To compute the binaural hearing loss, the lesser loss in the left ear, 15 percent, is multiplied by the established factor of 5, added to the 18.8 percent loss in the right ear and this sum is divided by the established factor of 6 to calculate a 16 percent binaural hearing loss.[16] The Board finds that the Office medical adviser properly applied the relevant standards of the A.M.A., *Guides* to determine that appellant has a 16 percent binaural hearing loss.

Appellant submitted the findings of an audiogram which was obtained by an audiologist on May 17, 2005 and a June 3, 2006 note in which Dr. Bernstein, an attending otolaryngologist, stated, "I have evaluated the audiogram of this patient and consider him/her a candidate for a hearing aid(s)." Appellant suggested that the May 17, 2005 audiogram showed that he has more than a 16 percent binaural hearing loss. The Board notes that it is not clear that Dr. Bernstein

[11] *Id*.

[12] *Id*.

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

[14] Dr. Mazer had certified the results of the audiogram as accurate.

[15] The 18.8 percent figure was obtained by rounding up from 18.75.

[16] The 16 percent figure was obtained by rounding up from 15.63.

was referring to the May 17, 2005 audiogram in his June 3, 2006 note and it is not otherwise clear that he has certified the results of the May 17, 2005 audiogram as accurate. Therefore, the May 17, 2005 audiogram is not considered probative medical evidence.[17] Moreover, the May 17, 2005 audiogram contains hearing loss findings that are less severe than those found in the March 4, 2004 audiogram obtained by Dr. Mazer.[18] Appellant suggested that a November 14, 2003 report of Dr. Markman, an attending physician Board-certified in occupational medicine, provided an opinion that his binaural hearing loss exceeded 16 percent. However, he did not provide any specific opinion on the extent of appellant's hearing loss.[19]

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.[20] The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.[21] A partial loss of hearing is compensated at a proportionate rate,[22] so appellant's award of compensation for a 16 percent binaural hearing loss entitled him to 16 percent of 200 weeks of compensation or 32 weeks of compensation. The record indicates that he already received this amount of compensation. Because appellant has been compensated for the percent binaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 16 percent binaural hearing loss, for which he received a schedule award.

[17] The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 1990).

[18] The May 17, 2005 audiogram shows total hearing loss of 115 decibels in the left ear and 130 decibels in the right ear, whereas the March 4, 2004 audiogram shows total hearing loss of 140 decibels in the left ear and 150 decibels in the right ear.

[19] It should be noted that the November 11, 2003 audiogram referenced by Dr. Markman in his report does not appear to have been certified as accurate by a physician around the time it was obtained. The record contains a March 3, 1983 audiogram signed by a physician, but this audiogram contains hearing loss findings that are less severe than those found in the March 4, 2004 audiogram obtained by Dr. Mazer. The record contains other audiograms, but none of these were certified as accurate by a physician.

[20] 5 U.S.C. § 8107(c).

[21] 5 U.S.C. § 8107(c)(13)(B).

[22] 5 U.S.C. § 8107(c)(19).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 1, 2005 decision is affirmed.

Issued: March 13, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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