United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 06-2028**
	)	**Issued: January 5, 2007**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Los Fresnos, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 1, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated August 14, 2006, which denied his request for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision.

ISSUE

The issue is whether appellant established that he sustained a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On April 21, 2006 appellant, then a 49-year-old immigration enforcement agent, filed an occupational disease claim alleging that he developed binaural hearing loss in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a statement indicating that he had worked for the employing establishment since approximately 1982 and was exposed to noise from various sources, such as jet engines and discharging firearms. He indicated that the employing establishment did not provide hearing protection until 1988. Audiograms performed on behalf of the employing establishment from 2002 to 2006 accompanied the claim.

On May 18, 2006 the Office requested additional information from appellant and the employing establishment. In response to the Office's request, appellant submitted a personal statement dated May 24, 2006. Appellant noted that he was exposed to noise during firearms training and from jet engines and loud human speaking voices while transporting illegal aliens. He was also exposed to outdoor noises while transporting illegal aliens in a passenger bus.

On June 9, 2006 the Office referred appellant, together with a statement of accepted facts, to Dr. Gregory S. Rowin, an otolaryngologist, for a second opinion evaluation of his hearing loss. Dr. Rowin examined appellant on June 28, 2006. In a report of that day, he listed his findings and diagnosed mild high-frequency sensorineural hearing loss, noting that appellant was exposed to noise from firearms while on the job. Dr. Rowin opined that appellant's hearing loss was due to workplace noise exposure. In an examination note accompanying the report, he also noted that appellant had tinnitus. An audiogram performed for Dr. Rowin on June 28, 2006 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following decibel losses: 10, 20, 5 and 20 for the right ear; 10, 20, 10 and 20 for the left ear. He recommended that appellant wear ear protection while "in the presence of noise" but did not recommend hearing aids.

On August 7, 2006 the Office medical adviser reviewed Dr. Rowin's audiometric test results. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he concluded that appellant had no ratable hearing loss. Appellant's date of maximum medical improvement was June 28, 2006, the date of Dr. Rowin's examination. The Office medical adviser concluded that "[n]oise exposure on the job is deemed sufficient to implicate it as a contributing factor to the claimant's minimal hearing loss."

By decision dated August 14, 2006, the Office informed appellant that his claim was accepted for binaural hearing loss. However, the extent of hearing loss was not severe enough to be considered ratable under the standards set forth by the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of schedule 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

[1] 5 U.S.C. § 8107

[2] 20 C.F.R. § 10.404 (2002).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

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

ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the June 28, 2006 audiogram for Dr. Rowin. The audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels and revealed decibel losses of 10, 20, 10 and 20 respectively for the left ear. The total decibel loss in the left ear is 60. When divided by 4, the result is an average hearing loss of 15 decibels. The average loss of 15 decibels is reduced by the "fence" of 25 decibels to equal fewer than 0 decibels, which when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the left ear.

Testing for the right ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 20, 5 and 20 decibels respectively, for a total of 55 decibels. When divided by 4, the result is an average hearing loss of 13.75 decibels. The average loss of 13.75 decibels is reduced by the "fence" of 25 decibels to equal fewer than 0 decibels, which when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the right ear. The Office medical adviser properly found that appellant had a zero percent hearing loss in both ears for schedule award purposes.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Rowin's June 28, 2006 report and accompanying audiogram. The result is

[3] *Id.*

[4] A.M.A. *Guides* 250 (5th ed. 2001).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

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

a nonratable binaural hearing loss. Therefore, appellant's hearing loss is not compensable for schedule award purposes.

Dr. Rowin's June 28, 2006 report also recorded an assessment of tinnitus. However, he found that appellant had 96 percent auditory discrimination in each ear. In the absence of a ratable hearing loss, a schedule award for tinnitus is not appropriate.[10] Accordingly, the Board finds that appellant is not entitled to a schedule award for tinnitus. Consequently, appellant's employment-related hearing loss is not ratable under the Office's uniform standards for evaluating hearing impairment for schedule award purposes.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2006 is affirmed.

Issued: January 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] *See L.S.*, 57 ECAB __ (Docket No. 06-1201, issued September 6, 2006).