

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

C.L., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL)
DEPOT NORTH ISLAND, San Diego, CA,)
Employer)

Docket No. 07-2370

Issued: April 11, 2008

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 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 6, 2007, which denied his request for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than a two percent hearing loss of the left ear, for which he received a schedule award.

FACTUAL HISTORY

On November 13, 2006 appellant, then a 61-year-old supply clerk, filed a claim for compensation alleging that he developed hearing loss due to his federal employment. He became aware of his hearing loss in May 1986. Appellant noted that he had additional workplace noise exposure until August 3, 2001, the date that he was removed from employment.

The record also contains documents pertaining to appellant's prior claim for hearing loss and a June 22, 1992 schedule award for two percent impairment of the left ear.¹ The Office based its June 22, 1992 schedule award on a June 1, 1992 report of an Office medical adviser who reviewed the June 6, 1991 audiogram of Dr. Paul M. Goodman, a Board-certified otolaryngologist and calculated that appellant had a two percent monaural hearing loss of the left ear. The Office medical adviser further noted that, when appellant was originally hired in 1980, he had a high frequency hearing loss in the left ear.

In a statement dated September 11, 2006, appellant indicated that, from January 1980 to February 1991, he worked as a sheet metal mechanic and from September 6, 1991 to August 3, 2001, he worked as a supply clerk in the same aircraft overhaul and repair building where he sustained his original hearing loss. As a supply clerk, he worked at a desk eight hours per day in open hangars where aircraft carriers were drilled and riveted without hearing protection. Appellant submitted employment establishment audiograms dated January 14, 1980 to February 10, 2005.

The employing establishment submitted a notification of personnel action dated February 5, 1991 which indicated that appellant was transferred from the position of sheet metal mechanic for aircraft to a supply clerk effective February 24, 1991. In letters to the claims examiner dated November 29 and December 29, 2006, it noted that the Office accepted appellant's claim for bilateral hearing loss in File No. 13-00912519, a closed file, with a date of injury of December 10, 1990. On February 24, 1991 appellant's position changed from a sheet metal mechanic for aircraft to a supply clerk where he worked until his removal on August 3, 2001. The employing establishment referenced a memorandum dated June 17, 1991, which noted that, upon appellant's transfer to the supply clerk position on February 24, 1991, he was terminated from the medical surveillance program for noise exposure because the potential health hazards for hearing loss were not identified in the supply clerk position.

By letter dated December 21, 2006, the Office advised appellant of the evidence needed to establish his claim. The Office also requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

On January 10, 2007 appellant indicated that his last exposure to hazardous noise at work was on August 3, 2001. He submitted audiograms dated October 6, 1997 and October 6, 2000.

In a June 22, 2007 statement of accepted facts, the Office noted appellant's workplace noise exposure beginning January 1980. From February 1991 to August 2001, appellant worked as a supply clerk and was responsible for receiving and reviewing material requests, picking up and delivering of emergency issue walk-throughs, providing parts for urgent work stoppage repairs and researching data. The Office indicated that the extent of the exposure to occupational noise was not known as there was no available noise level survey for review.

¹ The claim pertaining to this schedule award is File No. 13-0950136 which has been combined with the file before the Board, No. 132163386, regarding the November 13, 2006 claim.

By letter dated July 3, 2007, the Office referred appellant to Dr. Theodore Mazer, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Mazer with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Mazer performed an otologic evaluation of appellant on August 3, 2007 and audiometric testing was conducted on his behalf on that date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 35, 35, 35 and 35 decibels; left ear 55, 35, 30 and 45 decibels. In a report dated August 22, 2007, Dr. Mazer noted that baseline testing in 1980 revealed hearing loss at 500 hertz (Hz) at 40 decibels prior to federal employment and was noted at 45 decibels in 1991. He noted that comparing the initial testing in 1980 with that of 1991 on the left ear, there was no statistical difference with only a five decibel change overall in some of the pure tones at 500, 1,000, 2,000 and 3,000 Hz and no change at 3,000 Hz. Dr. Mazer indicated that the June 1991 audiogram resulted in a schedule award for hearing loss which was principally due to preexistent left-sided hearing loss at 500 Hz unrelated to federal employment based noise exposure. Appellant was subsequently transferred to a lower noise environment where no workplace hearing surveillance tests were required because exposure was no longer considered to be hazardous. Dr. Mazer opined that there was no evidence of any noise-induced hearing loss resulting in ratable impairment in the course of federal employment to October 2000 and no evidence of any progression of loss from the 1991 award to 2000. He further noted that, given the absence of progression of a ratable loss at 2,000 Hz, it was improbable that appellant would have had any ratable loss due to similar exposure by the time of his termination in 2001. Dr. Mazer noted that the current audiogram showed impairment in both ears, left worse than right. He determined that appellant was a candidate for amplification; however, this was not the result of exposure to noise through 2001 as the hearing levels throughout federal employment were essentially unchanged and, absent preexisting loss at 500 Hz on the left ear, appellant had questionable marginal rating for hearing impairment. Dr. Mazer advised that no other test results from 1991 to 2001 confirmed a ratable loss and opined that the current test results reflected early presbycusis. He concluded that there was insufficient evidence to support the progression of noise-induced hearing loss after 1991.

By a decision dated September 6, 2007, the Office denied appellant's claim for a schedule award on the grounds that the evidence of record did not establish that he sustained additional impairment due to his accepted noise exposure.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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 and to ensure equal justice under the law to all claimants,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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.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

The Board has long recognized that, if a claimant’s employment-related hearing loss worsens in the future, he or she may apply for an additional schedule award for any increased permanent impairment. The Board has recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record. In this latter instance, the request for an increased schedule award is not deemed a new claim.¹¹

Causal relationship is a medical issue that can be established only by medical evidence.¹² The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.¹³

⁴ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

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 (issued August 13, 2002).

¹¹ *Paul Fierstein*, 51 ECAB 381 (2000).

¹² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹³ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

ANALYSIS

The Board notes that, in a decision dated June 22, 1992, the Office previously granted appellant a schedule award for two percent monaural hearing loss for the left ear. The Board notes that hazardous noise exposure ended on February 24, 1991 when appellant changed positions from a sheet metal mechanic for aircraft to a supply clerk, where he worked until his removal on August 3, 2001. An employing establishment memorandum dated June 17, 1991, noted that appellant was terminated from the medical surveillance program for noise exposure because he was transferred to another shop as a supply clerk where these potential health hazards for hearing loss were not identified. The evidence supports that appellant's workplace noise exposure significantly decreased after February 24, 1991.

In a report dated August 22, 2007, Dr. Mazer determined that in accordance with the A.M.A., *Guides* (5th ed. 2001), appellant had a 17 percent binaural hearing impairment¹⁴ based on the August 3, 2007 audiogram performed on his behalf. He opined that while this showed a greater hearing loss than previously awarded, he did not attribute the increased hearing loss to appellant's accepted noise exposure.

Dr. Mazer noted that baseline testing in 1980 for the left ear revealed hearing loss at 500 Hz at 40 decibels prior to federal employment and testing in 1991 for the left ear at 500 Hz revealed hearing loss at 45 decibels. He indicated that the June 1991 audiogram resulted in a schedule award; however, the hearing loss was principally due to preexistent left-side hearing loss at 500 Hz unrelated to federal employment noise exposure. With regard to the right ear, Dr. Mazer noted that appellant tested better in 1991 than in 1980 and in neither case had a ratable impairment. He opined that there was no evidence of noise-induced hearing loss which resulted in ratable impairment in the course of federal employment and particularly no evidence of any work-related progression of loss from the 1991 award to 2000. Dr. Mazer indicated that in 1991 appellant transferred to a lower noise environment which did not require ongoing hearing surveillance because exposure was no longer considered hazardous. He noted that, while the current audiogram showed impairment in both ears, left worse than right, that appellant was a candidate for amplification. However, Dr. Mazer advised that this was not the result of exposure to noise at work through 2001 as the hearing levels throughout federal employment were essentially unchanged and, absent preexisting loss at 500 Hz on the left, appellant had questionable marginal rating for hearing impairment. He advised that no other test results from 1991 to 2001 confirmed a ratable loss and opined that the current test results reflected the impact

¹⁴ Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 35, 35, 35 and 35 decibels respectively for a total of 140 decibels. These losses were divided by four for an average hearing loss of 35 decibels. The average was reduced by 25 decibels (the first 25 decibels are deducted, as explain above) to 10 decibels, which was multiplied by 1.5 to arrive at a 15 percent monaural hearing loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 55, 35, 30 and 45 decibels, respectively for a total of 165 decibels. These losses were divided by four for an average hearing loss of 41.25 decibels. The average was reduced by 25 decibels (as explained above) to equal 16.25 decibels, which was multiplied by 1.5 to arrive at a monaural hearing loss of 24.37. The lesser loss of 15 is multiplied by 5, then added to the greater loss of 24.37 and the total is divided by 6 to arrive at the amount of the binaural hearing loss of 16.56 rounded up to 17 percent.

of early presbycusis. In particular, Dr. Mazer noted that an October 6, 2000 audiogram¹⁵ revealed no ratable impairment. He noted that there was insufficient evidence to suggest that appellant's progression of noise-induced hearing loss was related to his employment.

The Board finds that the medical evidence does not support that appellant has any increased hearing loss causally related to workplace noise exposure or to the progression of his previously accepted hearing loss. Dr. Mazer provided a thorough and reasoned medical report explaining how the increased hearing loss was not due to the employment but was the result of presbycusis. Appellant has not submitted any recent medical opinion supporting that any increase in his hearing loss is employment related. In the absence of reasoned medical opinion evidence to establish that appellant has increased hearing loss causally related to his accepted noise exposure, the Office properly denied his request for an additional schedule award.¹⁶

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award for increased hearing loss causally related to his work-related hearing loss condition.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2008
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

¹⁵ This audiogram revealed decibels losses of 20, 20, 5 and 50 on the right at the frequency levels of 500, 1,000, 2,000 and 3,000 cps. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 40, 20, 10 and 30 respectively.

¹⁶ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).