United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 08-355**
	)	**Issued: May 13, 2008**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Jacksonville, FL Employer	)	

Appearances:
Appellant, 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 14, 2007 appellant filed a timely appeal from the November 6, 2007 decision of the Office of Workers' Compensation Programs denying his claim for a schedule award for an employment-related hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On April 4, 2007 appellant, then a 52-year-old pilot, filed an occupational disease claim, Form CA-2, alleging that he sustained hearing loss due to loud aircraft noise. When he began working for the employing establishment in 1987, he interviewed pilots and inspected aircraft at airports three days a week and was exposed to the noise of taxiing airplanes. From 1992 to 1998,

he flew a Nomad aircraft, which are considered high-noise because the tips of the propellers are 18 to 24 inches from the pilot's head. While logging over 1,000 flight hours in the Nomad, appellant used a headset that diminished the noise, but still required him to turn the radio up quite loud to hear it over the engine. He received a noise-canceling headset in 2002 that greatly reduced engine and propeller noise while flying, though he continued to be exposed to a large amount of airplane noise during preflight and taxiing. Appellant stated that he first noticed his hearing loss in 1997 and had no hearing loss prior to his federal employment. He provided a partially illegible audiogram conducted on April 4, 2007. The employing establishment indicated on the reverse of the claim form that the "Employee did not miss any work. He has the same duties."

In a May 9, 2007 statement, George Oliver, appellant's supervisor, agreed that appellant worked in a high-noise environment. He stated that appellant had flown thousands of hours in a variety of different aircrafts. On July 11, 2007 Mr. Oliver notified the Office that the employing establishment had no noise surveys available, but that exposure to noise was unavoidable even when hearing protection was worn.

On August 2, 2007 appellant was referred for a second opinion examination to determine the cause of his hearing loss. On October 26, 2007 Dr. Michael Loper, a Board-certified otolaryngologist, examined appellant. An audiogram conducted the same day showed losses of 10, 5, 5 and 15 decibels on the right and 15, 10, 10 and 55 decibels on the left, respectively, for frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). Dr. Loper opined that appellant's hearing loss was in excess of what would be expected with presbycusis and that his employment was sufficient to cause the hearing loss. He noted that appellant's ear canals and drums were clean, clear and intact. Dr. Loper opined that the higher left ear hearing loss was due to greater noise exposure on that side, as reported by appellant. He diagnosed bilateral high frequency neurosensory hearing loss, left greater than right, due to appellant's federal employment. Dr. Loper stated that his diagnosis was based on the degree and configuration of the hearing loss and the fact that it was in excess of that expected by presbycusis. He recommended hearing conservation measures.

The Office submitted Dr. Loper's report to an Office medical adviser for an impairment rating. On November 2, 2007 Dr. Eric Puestow found that the date of appellant's maximum medical improvement was October 26, 2007. Applying the formula from the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed., 2001) to the audiogram results reported by Dr. Loper, he calculated that appellant had 0 percent hearing loss on the right and the left. Dr. Puestow diagnosed bilateral sensorineural hearing loss but found that it was not significant enough to entitle appellant to a schedule award or hearing aids.

By decision dated November 6, 2007, the Office accepted appellant's claim for hearing loss. Noting that his hearing loss was not severe enough to be ratable, the Office denied his claim for a schedule award and medical benefits.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations 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.[2] The Act provides for 52 weeks of compensation for total loss of hearing in one ear and 200 weeks for total loss of hearing in both ears.[3] Any loss less than a total loss is compensated at a proportionate rate.[4]

The Act does not specify the manner in which the percentage of loss is to be determined for the purposes of schedule awards. 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5] Therefore, the Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[6] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[7] 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.[8] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[9] 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.[10] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[11]

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[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(13).

[4] 5 U.S.C. § 8107(c)(19); *David W. Ferrall*, 56 ECAB 362 (2005).

[5] 20 C.F.R. § 10.404.

[6] A.M.A., *Guides* 246-51 (5th ed., 2001).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

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

ANALYSIS

The Office accepted that appellant's hearing loss was related to his federal employment, but denied his claim for a schedule award on the grounds that his loss was not ratable. The issue to be resolved is whether appellant has established that the degree of his hearing loss entitles him to a schedule award.

The Office referred appellant to Dr. Loper, a Board-certified otolaryngologist, for a second opinion on the cause of his hearing loss. Based on Dr. Loper's opinion, the Office accepted appellant's hearing loss claim for a binaural hearing loss. The Office properly referred the medical record to Dr. Puestow, an Office medical adviser, who reviewed Dr. Loper's report and properly utilized the A.M.A., *Guides* to determine whether appellant sustained a compensable hearing loss. Dr. Puestow added the right ear decibel losses recorded at 500, 1,000, 2,000 and 3,000 cps, which were 10, 5, 5 and 15, respectively, for a total of 35 decibels. When divided by 4, this resulted in an average hearing loss of 8.75 decibels. The average loss of 8.75 was then reduced by a "fence" of 25 decibels to 0, which was multiplied by the established factor of 1.5 to compute a 0 percent impairment in 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 15, 10, 10 and 55 decibels respectively, for a total of 90 decibels. This figure resulted in an average hearing loss of 22.5 decibels when divided by 4. The average loss of 22.5 decibels was reduced by 25 decibels to 0, which was multiplied by the established factor of 1.5 to compute a 0 percent impairment in the left ear.

Consequently, the evidence of record establishes that appellant has no ratable hearing loss in either ear. The Board finds that the Office properly determined that appellant's employment-related hearing loss was not significant enough to be ratable. Thus, he was not entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not established 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 November 6, 2007 is affirmed.

Issued: May 13, 2008
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