United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 11-1724**
	)	**Issued: March 27, 2012**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, El Paso, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 19, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs (OWCP) merit decision dated January 25, 2011 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 merits of the case.

ISSUE

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

FACTUAL HISTORY

On June 4, 2010 appellant, then a 59-year-old pilot, filed a claim alleging that he sustained permanent hearing loss due to employment factors such as gunfire and aircraft engine

noise. He became aware of his hearing loss and realized it was related to his work on June 24, 2002. Appellant retired on June 30, 2007.[1]

By letter dated June 21, 2010, OWCP advised appellant of the type of evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

In support of his claim, appellant submitted statements dated June 4 and July 14, 2010 describing his employment history. He noted that from November 1982 to December 1983, he was employed by Burnside-Ott Corporation as a flight simulator instructor and was not exposed to noise. From January 1981 to November 1982 appellant worked as a pilot for Air Florida Airlines and was not exposed to noise as the cockpit was noise free. From January 1972 to August 1980 he worked as a pilot with the U.S. Navy and wore a pilot flight helmet with integrated noise suppression features. Appellant noted that from December 1983 to June 30, 2007 he worked as a pilot with the employing establishment and was exposed to noise during quarterly firearm qualifications which included one day of firing pistols, assault rifles, shotguns and automatic weapons. He noted that hearing protection was available. Appellant noted that he was subjected to noise from aircraft engines, small noisy propellers and jet powered fixed wing aircraft for four hours a day, 15 days a month. He noted that hearing protection was always provided.

Appellant submitted the employing establishment audiograms from June 24 to August 21, 2002 which showed hearing loss and recommended continued annual testing. Also submitted were audiograms from an audiologist dated February 27, 2007 and July 2, 2008 which revealed a mild high frequency hearing loss.[2]

The employing establishment submitted a July 30, 2010 statement noting that appellant was exposed to noise during his employment from jet engines, piston engines, rotator noise from helicopters and weapons firing for 2 to 4 hours a day and 10 to 20 hours a week.

On December 7, 2010 OWCP referred appellant to Dr. William C. Smith, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a December 21, 2010 report, Dr. Smith noted examining appellant and noted appellant's exposure to noise at the workplace. He diagnosed bilateral high frequency sensorineural hearing loss worse in the left ear which was due to the noise exposure encountered in his job. Dr. Smith advised that appellant had significant noise exposure working as a pilot. He indicated that the sensorinueral loss was in excess of what would normally be predicated on the basis of presbycusis and recommended a trial of hearing aids. Dr. Smith noted that the external canals were open and normal bilaterally, the tympanic membranes were intact and normal bilaterally, there was no active ear disease and noted wax impacted the bilateral canals and was removed and

[1]Appellant filed a separate claim for a back injury sustained on January 28, 2000 which OWCP denied as work related. He appealed the claim to the Board and the Board affirmed OWCP's decision. *See* Docket No. 00-1925 (issued April 19, 2001).

[2] These audiograms did not include markings for threshold levels at 3,000 hertz.

the canals and drums were normal. He indicated that there was no evidence of acoustic neuroma or Menieres disease. Dr. Smith performed an otologic evaluation of appellant on December 21, 2010 and audiometric testing was conducted on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following right ear 25, 5, 15 and 15 decibels; left ear 40, 15, 5 and 25 decibels.

On January 6, 2011 OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to noise exposure and authorized hearing aids.

On January 18, 2011 an OWCP medical adviser reviewed Dr. Smith's report and the audiometric test of December 21, 2010. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[3] (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying OWCP's current standards for evaluating hearing loss to the results of the December 21, 2010 audiogram. He noted that appellant reached maximum medical improvement on December 21, 2010.

In a decision dated January 25, 2011, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable for purposes of a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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, FECA 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[7] 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.[8] Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no

[3] A.M.A., *Guides* (6th ed. 2008).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id. See also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] A.M.A., *Guides* 250 (6th ed. 2008).

[8] *Id.*

impairment in the ability to hear everyday speech under everyday conditions.[9] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[10] 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.[11] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[12]

ANALYSIS

Appellant filed a claim for hearing loss and OWCP developed the claim by referring him to Dr. Smith. In a December 21, 2010 report, Dr. Smith examined him and obtained audiometric testing on the same date. He opined that the noise exposure at appellant's workplace caused bilateral high frequency sensorineural hearing loss worse in the left ear which was due to the noise exposure encountered in his job. Based on Dr. Smith's report, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and authorized hearing aids.

OWCP's medical adviser applied OWCP's standard procedures to the December 21, 2010 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 25, 5, 15 and 15 respectively. These decibels were totaled at 60 and were divided by 4 to obtain an average hearing loss at those cycles of 15 decibels. The average of 15 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero, which was multiplied by the established factor of 1.5 to compute a zero percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 40, 15, 5 and 25 respectively. These decibels were totaled at 85 and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a zero percent monaural hearing loss for the left ear.

The Board finds that OWCP's medical adviser applied the proper standards to the December 21, 2010 audiogram in determining that appellant did not have a ratable hearing loss for schedule award purposes. Consequently, the Board finds that the weight of the medical evidence establishes that appellant has no ratable loss of hearing pursuant to the A.M.A., *Guides*.

On appeal, appellant asserts that OWCP improperly based his schedule award on an audiogram performed on December 21, 2010 rather than audiograms performed on June 24 and August 16, 2002, February 27, 2007 and July 2, 2008, which measured hearing loss over a six-year period. However, these audiograms were not reviewed or certified by a physician.

[9] *Id.*

[10] *Id.*

[11] *Id.*

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

Therefore, these tests cannot be the basis of an impairment determination.[13] It is not disputed that appellant has hearing loss due to his employment, but under the standards used by OWCP for evaluating hearing loss, his hearing loss is not ratable for schedule award purposes.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[13] *See Joshua A. Holmes*, 42 ECAB 231 (1990) (while OWCP should evaluate audiograms from a physician that are made within about two years of each other and are submitted by more than one specialist, OWCP does not have to review an audiogram which has not been certified by a physician). *See also Robert E. Cullison*, 55 ECAB 570 (2004).