

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARNOLD L. YORK, JR. and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 98-1549; Submitted on the Record;
Issued November 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that he is entitled to a schedule award for his employment-related hearing loss.

The Board has duly reviewed the case record on appeal and finds that appellant failed to establish that he is entitled to a schedule award for his employment-related hearing loss.

On September 25, 1997 appellant, a retired planner and estimator boilermaker,¹ filed an occupational disease claim, alleging that factors of his employment caused hearing loss and ringing in the ears. He noted that his members of his family complained that he could not hear them and that he required the television and radio be at a loud volume in order to be distinctly heard. The record indicates that appellant had a previous claim with a date-of-injury of October 7, 1975 that was accepted by the Office of Workers' Compensation Programs for hearing loss due to employment-related noise exposure but that the hearing loss was not ratable.² By letters dated December 30, 1997 and January 23, 1998, the Office requested that appellant furnish information regarding his hearing loss. In response, appellant stated that he was aware his hearing loss had worsened at the time he retired but seemed to indicate that it had worsened since that time. He did not submit medical evidence. By decision dated February 17, 1998, the Office denied the claim on the grounds that, pursuant to 5 U.S.C. § 8122, the claim had not been timely filed as it should have been filed within three years of the date of injury, the date of awareness of a relationship between the condition and employment, or the date of last exposure. The Office noted that appellant stated that he was aware that he had additional hearing loss in the 1990s and realized it prior to his retirement. The instant appeal follows.

¹ Appellant retired on May 3, 1994.

² The 1975 claim was adjudicated by the Office under file number A130487883, and the record indicates that this record was destroyed in 1982. The instant claim was adjudicated by the Office under file number A131152890.

Under section 8107 of the Federal Employees' Compensation Act and section 10.304 of the implementing regulations, schedule awards are payable for permanent impairment of specified body members, functions or organs.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined.

The Board finds that, while appellant filed a second occupational disease claim, he was actually informing the Office that he had an increased hearing loss due to his accepted employment-related condition and was seeking a schedule award. The Board has long recognized that if a claimant's employment-related hearing loss worsens in the future, the claimant may apply for an additional schedule award for any increased permanent impairment. 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.⁴ As appellant's hearing loss was an employment-related condition, his request for a schedule award was timely filed.⁵

In this case, however, appellant did not submit any medical evidence to support his claim that his hearing had worsened. If at some future date a medical examination indicates that his employment-related condition has worsened, an amended schedule award could then be made.⁶

On appeal, appellant also contends that he is entitled to compensation for "ringing in the ears" which he claims was sustained as a result of exposure to hazardous noise during the course of his federal employment. The Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing,⁷ and in this case there is no such supporting medical evidence.

As appellant did not submit any medical evidence that demonstrates that his employment-related hearing loss has worsened, he has failed to establish that he is entitled to a schedule award.

³ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

⁴ *Paul R. Reedy*, 45 ECAB 488 (1994).

⁵ See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.7(b) (March 1995). This section states that claims for increased schedule awards may be based on incorrect calculation of the original award or new exposure. To the extent that a claimant is asserting that the original award was erroneous based on his medical condition at that time, this would be a request for reconsideration. A claim for an increased schedule award may be based on new exposure or on a situation where the medical evidence indicates that a progression of the employment-related condition, without new exposure to employment factors, resulted in a greater permanent impairment than previously calculated.

⁶ *Andrew Aaron, Jr.*, 48 ECAB ____ (Docket No. 95-1827, issued October 23, 1996).

⁷ *Charles H. Potter*, 39 ECAB 645 (1988).

The decision of the Office of Workers' Compensation Programs dated February 17, 1998 is hereby affirmed as modified.

Dated, Washington, D.C.
November 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member