U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE B. KNIGHT and DEPARMENT OF THE ARMY, U.S. ARMY MATERIAL COMMAND, SIERRA ARMY DEPOT, Herlong, CA

Docket No. 98-204; Submitted on the Record;
Issued October 27, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has a compensable hearing loss causally related to noise exposure in his federal employment.

Appellant, a 50-year-old mechanical equipment repairman,[1] filed a notice of occupational disease and claim for compensation (Form CA-2) alleging he developed a hearing loss and tinnitus due to noise exposure in his federal employment. Appellant submitted a statement, wherein he described his exposure to noise as part of his employment since 1965.

In response to the Office of Workers' Compensation Programs' June 3, 1997 request for further information, appellant submitted audiograms from his annual hearing tests. He also submitted audiometric results for testing occurring on September 20, 1982, April 12, 1983, April 17, 1984 and December 11, 1986.

In addition, appellant submitted a report from Christopher Harjes, an audiologist, in which after review of the January 17, 1997 hearing test he conducted and prior yearly hearing tests from September 8, 1964, determined that the hearing tests revealed a gradual high-frequency sensorineural hearing loss; that the audiogram of January 17, 1997 revealed a bilateral normal to severe right-frequency sensorineural hearing loss, that discrimination scores for the right ear and left ear were 96 percent and 100 percent, respectively; and that appellant had lost approximately 15 percent of his hearing even though in the extreme high frequencies between 4,000 to 8,000 Hertz (Hz), he has lost a percentage of approximately 80 percent of his hearing. Mr. Harjes recommended that appellant receive high-frequency hearing aids.

[1] Appellant has held numerous positions throughout his career with the employing establishment, including motor vehicle operator, forklift operator, equipment cleaner, ammunition handler and shelter repairer. Appellant has worked at both the Sacramento Army Depot and the Sierra Army Depot. He remains employed at the latter facility.

The employing establishment submitted a description of appellant's exposure to noise at the employing establishment as well as during his tenure at Sacramento Army Depot. Additionally, appellant's employment records were submitted, which included audiometric results of testing.

In a medical report dated July 17, 1997, Dr. Stuart Gherini, a Board-certified otolaryngologist, reviewed appellant's personal history of hearing loss and his present complaints, his employment history, his noise exposure history and his past medical history. He conducted a physical examination and an audiologic examination, which included a speech reception threshold test and a speech recognition test. Dr. Gherini diagnosed bilateral severe noise-induced high frequency sensorineural hearing loss and binaural tinnitus. He concluded that the rapid deterioration of hearing in the higher frequency was in all probability due to noise exposure at work. Dr. Gherini's audiological examination revealed that at testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second appellant sustained losses of 20, 20, 10 and 15 decibels respectively. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 15, 15 and 20, respectively. Dr. Gherini determined that this resulted in a zero percent hearing loss in each ear. He further noted that while there is no ratable hearing impairment, it was his medical opinion "that in all probability appellant's bilateral severe high-frequency sensorineural hearing loss represents a work-related injury due to cumulative noise exposure, a part of which occurred while [working for the employing establishment]."

On September 6, 1997 the Office prepared a statement of accepted facts, noting that it accepted as factual that appellant was exposed to hazardous noise levels in the performance of duty in federal employment. The Office referred the statement of accepted facts, together with the case record, to Dr. David N. Schindler, a Board-certified otolaryngologist acting as an Office medical consultant.

In a September 8, 1997, medical report, Dr. Schindler, noting that the "several audiograms" of record "reveal a fluctuated and mildly progressive high frequency hearing loss," reviewed appellant's records and concluded that the bilateral high frequency neurosensory hearing loss that was diagnosed by Dr. Gherini, was consistent with noise exposure and was aggravated by conditions of his federal employment. He then noted that for schedule award purposes, appellant suffers from a "permanent functional loss of hearing." Dr. Schindler applied the Office standards to Dr. Gherini's July 17, 1997 audiogram and concluded that appellant had a zero percent monaural loss in the right ear and a zero percent monaural loss in the left ear, for a zero percent binaural neurosensory hearing loss.

In a decision dated September 23, 1997, the Office denied appellant's claim for a schedule award on the grounds that appellant's hearing loss, although causally related to his federal employment, was not of the extent to be compensable.

The Board finds that appellant has not sustained a compensable hearing loss causally related to factors of his federal employment.

The schedule award provision of the Federal Employees' Compensation Act[2] provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body listed in the schedule.[3] The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office.[4] However, as a matter of administrative practice, the Board has stated: "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."[5]

The Office evaluates hearing losses in accordance with the standard set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition rev., 1993).[6] and the Board has concurred in the use of this standard.[7] Under this standard, the decibel (dB) losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hz are added, then divided by 4 to arrive at the average.[8] From this average, the "fence" of 25 dBs is deducted since, 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 condition. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. 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 percentage of binaural hearing loss.

In the present case, appellant was referred for an evaluation by Dr. Gherini, a Board-certified otolaryngologist. His report and accompanying audiometric testing results meet the requirements established by the Office and were properly used to evaluate appellant's hearing

[2] 5 U.S.C § 8101 *et seq.*

[3] 5 U.S.C. § 8107.

[4] *James A. England*, 47 ECAB 115, 117 (1995).

[5] *Id.; Henry L. King*, 25 ECAB 39, 44 (1973).

[6] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition. rev., 1993).

[7] *James A. England*, *supra* note 4 at 117.

[8] A.M.A., *Guides*, *supra* note 6 at 166-67.

loss.[9] Dr. Gherini diagnosed that appellant suffered from bilateral severe noise-induced, high-frequency sensorineual hearing loss and binaural tinnitus.[10] The results from Dr. Gherini show that at the frequencies of 500, 1,000, 2,000 and 3,000 Hz, appellant had dB loss of 20, 20, 10 and 15. The losses are averaged for a total of 16.25. As noted above, the fence of 25 must be deducted from the average dB loss, thereby resulting in a zero percent impairment in the right ear. For the left ear, the average dB losses of 20, 15, 15 and 20 equals 17.5, but again the fence of 25 is deducted and the result is a zero percent impairment in the left ear. Accordingly, the Board finds that the Office properly evaluated the medical evidence in concluding that appellant did not have a ratable hearing loss for schedule award purposes. Although the medical evidence, as represented by Dr. Gherini, reveals that appellant has sustained an employment-related loss of hearing, it was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the act.[11]

The decision of the Office of Workers' Compensation Programs dated September 23, 1997 is affirmed.

Dated, Washington, D.C.
October 27, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] The Board notes that the report and audiogram of Dr. Gherini constitutes the most complete evaluation of record as the medical records denoting the annual evaluations at the employing establishment either were devoid of audiograms to accompany the audiometric results, or were devoid of a medical report containing, *inter alia*, a complete and accurate factual and medical history and findings on examination. Due to the deficiencies, the other evaluations of record were of diminished probative value and Dr. Schindler properly selected the report and audiogram of Dr. Gherini the most representive of the extent and degree of appellant's employment-related loss of hearing; *see Eugene F. Bulter*, 36 ECAB 393 (1984).

[10] It is noted that Dr. Schindler reviewed the report and audiogram, applied the Office standards to the July 17, 1997 audiogram and concluded that appellant had a zero percent, monaural loss in the right ear as well as a zero percent monaural loss in the left ear.

[11] *Royce L. Chute*, 36 ECAB 202 (1984).