U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BEN M. DIAZ and DEPARTMENT OF THE NAVY,
U.S. NAVAL SHIP REPAIR FACILITY, Guam

*Docket No. 99-799; Submitted on the Record;*
*Issued April 14, 2000*

---

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing a ratable hearing loss, for which he was entitled to a schedule award.

On September 25, 1997 appellant, then a 56-year-old rigger, filed an occupational disease claim, alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he first became aware of his condition and realized that it was caused or aggravated by his employment on June 1, 1992. The employing establishment indicated that appellant retired on August 29, 1997.

Accompanying the claim, appellant and the employing establishment submitted personnel records, and audiological test results dating from May 10, 1983 through August 27, 1997. In his statement appellant noted that he was exposed to hazardous levels of noise while working for the Department of the Navy from 1978 until 1997 as a welder. In the employing establishment's statement, it was an accepted fact that appellant was exposed to hazardous noise as a welder both in the shops as well as on ships.

Among the audiograms forwarded by the employing establishment were an April 30, 1997 audiogram indicating that testing for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 15, 10, 15 and 70, respectively while testing for the right ear revealed decibel losses of 25, 10, 10 and 45. An August 27, 1997 audiogram, at the same frequencies, showed decibel losses for the left ear of 15, 10, 15 and 65, respectively, while testing for the right ear revealed decibel losses of 20, 10, 10 and 45.

In a letter dated February 5, 1998, the Office of Workers' Compensation Programs referred appellant, together with a statement of accepted facts, the medical record, audiograms, and exposure information to Dr. Michael J. Lanser, a Board-certified otolaryngologist, for otologic examination and audiological evaluation.

In a report dated March 4, 1998,[1] Dr. Lanser indicated that appellant's work involved daily noise exposure with grinding and scraping. He diagnosed tinnitus and bilateral sensorineural hearing loss, mild to severe with no significant air-bone gap. Stenger test was negative at 3,000 hertz, with speech discrimination good in the right ear and fair in the left ear. Dr. Lanser reported that there was nothing in appellant's medical or family history to apportion any of his hearing loss to any preemployment or nonindustrial factors. An accompanying March 12, 1998 audiogram, taken on the doctor's behalf, reported that testing for appellant's left ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 30, 20, 20 and 70 by air conduction, respectively, while testing for the right ear revealed decibel losses of 30, 20, 25 and 50, by air conduction, respectively. Dr. Lanser concluded that the hearing loss was permanent and would not improve and that there was no medical or surgical procedure that would improve the loss. Dr. Lanser also recommended that a hearing aid be issued to appellant.

The Office referred Dr. Lanser's report and case record to Dr. Brian Schindler, an Office medical consultant and Board-certified otolaryngologist, for his review. In a report dated April 24, 1998, Dr. Schindler noted that he reviewed the file and concurred with Dr. Lanser that appellant's hearing was causally related to noise exposure. Dr. Schindler further found that appellant's hearing loss worsened after his retirement in August 1997 and he noted using the audiogram dated August 27, 1997 to calculate appellant's schedule award. He reported that based on the review of the August 27, 1997 audiogram appellant had not sustained any ratable hearing loss in the right ear and had a two percent monaural loss in the left ear.

The Office accepted appellant's claim for a bilateral sensorineural hearing loss and appellant filed a claim for a schedule award on October 22, 1998.

In a decision dated November 6, 1998, the Office granted appellant's claim for a schedule award for a two percent permanent impairment. The award was for 1.04 weeks of compensation from August 27 to September 3, 1997.[2]

The Board finds that this case is not in posture for decision.

Section 8107(c) of the Federal Employees' Compensation Act[3] specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.[4] For consistent results and to ensure equal justice under the law to all claimants, good administrative practice

[1] Portions of the report appear to have been drafted at a later date as the report also discusses the audiogram taken on Dr. Lanser's behalf on March 12, 1998.

[2] The schedule award decision does not specifically identify the schedule member for which the award was granted. However, from the context of the relevant evidence, it appears that the award was for a left ear (monaural) hearing loss, and the Board so finds.

[3] 5 U.S.C. §§ 8101-8193, 8107(c).

[4] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.[5]

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a "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 sounds under everyday conditions. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.[6] The Board has concurred in the Office's adoption of this standard for evaluation hearing loss for schedule award purposes.[7] In addition, the Office's procedures require that all claims for hearing loss due to its acoustic trauma, requires an opinion from a Board-certified specialist in otolaryngology.[8] The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speed Language Hearing Association (ASHA), or state licensure as an audiologist.[9]

In the present case, the Office medical consultant did not calculate appellant's schedule award based on the audiogram dated March 12, 1998, which was performed on behalf of Dr. Lanser. Rather, the Office medical consultant reviewed an earlier audiogram dated August 27, 1997 taken by the employing establishment.

Although Dr. Schindler, the Office's medical consultant, may review any audiogram of record[10] in determining which one most accurately reflects appellant's employment-related hearing loss, the Office should not arbitrarily select one audiogram without explanation.[11] Board precedent contemplates that the Office will give rationale for selecting one audiogram over another or, in the alternative, it may have another evaluation made of appellant's hearing in order to resolve the inconsistency.[12]

Office procedures also contemplate that, while noise-induced hearing loss does not typically progress after exposure to noise ceases, an Office medical adviser or consultant will

---

[5] *Henry L. King,* 25 ECAB 39 (1973); *August M. Buffa,* 12 ECAB 324 (1961).

[6] A.M.A., *Guides* at 166 (4th ed. 1994).

[7] *See Goings, supra* note 4.

[8] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3(d)(6) (June 1995).

[9] Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports,* Chapter 3.600.8(a)(2) (September 1994).

[10] *See Joshua A. Holmes,* 42 ECAB 231 (1990).

[11] *See John C. Messick,* 25 ECAB 333 (1974).

[12] *See id.*

provide a well-rationalized opinion for selecting one audiogram over another in a situation where a nonratable hearing loss is shown on an audiogram soon after noise exposure ceases while a second audiogram shows a ratable loss.[13]

In this case, the only explanation given by Dr. Schindler for selecting the August 27, 1998 audiogram, taken two days before appellant retired, is that "there has been significant change in hearing after the claimant's retirement." The doctor did not provide any medical rationale to explain why such a shift would not be caused or aggravated by appellant's employment or otherwise further explain why the employing establishment audiogram, which apparently did not conform with the Office requirements for audiometric testing,[14] was selected over the March 12, 1998 audiogram taken on behalf of Dr. Lanser, the Office's referral physician, less than seven months after appellant retired. Therefore, the medical evidence is insufficiently developed with regard to which audiogram most accurately reflects appellant's employment-related hearing loss. The Board has held that, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[15]

Consequently, the case must be remanded for the Office to obtain a reasoned medical opinion regarding which audiogram most accurately reflects appellant's employment-related hearing loss. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.[16]

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(3) (September 1994).

[14] For example, the employing establishment's August 27, 1997 audiogram did not indicate that bone conduction thresholds were obtained for the relevant frequencies or that speech reception thresholds were established for each ear; *see* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600 exh. 4 (September 1996).

[15] *Robert F. Hart*, 36 ECAB 186 (1984).

[16] On appeal, appellant contends that he should be compensated for his tinnitus. While there is no dispute that appellant has tinnitus, the Board has held that there is no basis for paying a schedule award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a permanent loss of hearing. This is not established by the evidence currently of record; *see Royce L. Chute*, 36 ECAB 202 (1984).

The November 6, 1998 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 14, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member