U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. DOEHLING and DEPARTMENT OF THE ARMY, ROBINS AIR FORCE BASE, Atlanta, GA

Docket No. 00-1175; Submitted on the Record;
Issued May 8, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs determined the correct pay rate for a schedule award granted appellant for 25 percent binaural hearing loss.

On April 6, 1999 appellant, then a 51-year-old director of operations, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained permanent hearing loss while in the performance of duty. Appellant stated that he became aware of his hearing loss in 1998 and related it to his employment in 1994. He did not stop work. Also on July 8, 1999 appellant filed a claim for a schedule award. Accompanying appellant's claim was a Form CA-7 submitted by the employing establishment which indicated appellant has a base pay of $75,485.00 per year and military pay of $26,841.00 per year.

In an accompanying statement, appellant listed his history of employment, indicating that he had been exposed to excessive noise for a 29-year period beginning in 1970 until the present. He noted, as a fighter pilot and flight instructor from 1970 to 1979, he was subjected to noise from aircraft environmental systems, airframes, communications and wind noise in flight, for 10 hours per week. Appellant indicated that he was provided with earplugs and defenders for hearing protection. As a flight officer with the Air National Guard from 1979 to 1989, appellant was subjected to noise from aircraft engines and in-flight aircraft systems noise, for 15 hours per week. He noted that he was provided with earplugs, defenders and headsets for hearing protection. As a bomber pilot and flight instructor with the Georgia Air National Guard, appellant was subjected to noise from aircraft engines, aircraft environmental systems, airframes, communications and wind noise in flight, for 15 hours per week. Appellant indicated that he was provided with earplugs, headsets and defenders for hearing protection.[1]

[1] Appellant noted a previous hearing loss claim in 1994 whereby he was granted a schedule award for 12 percent bilateral sensorineural hearing loss. This was claim number 06-0608311. This claim is not before the Board.

Appellant also furnished the Office with copies of his job description, employment records, employee medical reports and audiograms performed at the employing establishment.

In a statement of accepted facts dated April 23, 1999, the Office noted that appellant's jobs as a fighter pilot, flight instructor and flight officer from 1970 to the present exposed him to aircraft engine noise, communications and wind noise in flight, environmental system noise and airframes noise. Appellant used both earplugs and defenders for hearing protection.

By letter dated April 27, 1999, the Office referred appellant for a second opinion to Dr. Gregory Garth, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Garth with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Garth performed an otologic evaluation of appellant on May 11, 1999 and audiometric testing was conducted on his behalf the same day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: Right ear 40, 45, 50 and 60 decibels; left ear 20, 30, 45 and 65 decibels. Dr. Garth determined that appellant sustained sensorineural hearing loss.

On June 7, 1999 an Office medical adviser reviewed Dr. Garth's report dated May 11, 1999 and the audiometric test of the same date. Dr. Garth concluded that appellant sustained a bilateral sensorineural hearing loss, which was caused or made worse by exposure to occupational noise. The Office medical adviser determined, after applying the Office's current standards for evaluating hearing loss to the results of the May 11, 1999 audiology test that appellant was entitled to a schedule award of 25 percent. He determined that appellant had a 22.50 percent monaural hearing loss in the left ear and 35.63 percent monaural hearing loss in the right ear which resulted in a 25 percent binaural hearing loss. The Office medical adviser recommended that a hearing aid be authorized. The Office medical adviser noted reviewing the medical record and concluded that the May 11, 1999 audiogram was used for adjudication as it met all Office standards and was part of Dr. Garth's evaluation.

By decision dated August 23, 1999, the Office determined that appellant sustained a 25 percent binaural hearing loss and was entitled to a schedule award. The Office determined appellant's pay rate to be $1,451.63 per week. The period of the schedule award was from May 11, 1999 to April 24, 2000.

Appellant was issued checks for the period May 11 to August 14, 1999 for $14,931.02 and for the period August 15 to September 11, 1999 for $4,354.88.[2]

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

On appeal appellant asserts that the Office used the wrong pay rate in calculating his compensation and that additional compensation is due to him. He indicated that the weekly pay

[2] It appears that subsequent to the Office's decision of August 23, 1999 the Office began preliminary development regarding appellant's pay rate, however, the Board cannot consider this on appeal because this was done after the Office's decision.

was based on his base pay of $75,485.00 per year, as reflected in his Form CA-7, however, it did not take into consideration his additional "military" pay of $26,841.00 per year. The apparent discrepancy as to whether or not the additional "military" pay is included in appellant's pay rate when calculating his compensation is not explained in the record.

The Office has established procedures to be followed in clarifying pay rate discrepancies. Paragraph 2 of Chapter 2.0900 of the Office's procedure manual provides in relevant part:

> "(1) The CE must clarify any material discrepancies in the record before establishing a pay rate for compensation purposes. This can be done by letter or by telephone call followed by written confirmation."[3]

In this case, the Office did not make findings and determine whether the "military" pay was to be included when calculating the appropriate pay rate for appellant's schedule award. Chapter 2.807(11) of the Office's Procedure Manual[4] provides in relevant part:

> "11. *Regular Pay:* An employee's regular pay is his or her average weekly earnings, including premium, night or shift differential, holiday pay, Sunday premium pay except to the extent prohibited by law, or other extra pay, including FLSA pay for firefighters, emergency medical technicians and others who earn and use leave on the basis of their entire tour of duty."
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> "f. *National Guard and Military Reserve:* Where membership in the National Guard or the military reserve is a condition of employment, COP should include military drill and field training pay. Where this varies from one week to another, the average military field and training pay earned by the employee during the year prior to injury should be included."

In this case, it is unclear from the record if appellant's "military" pay of $26,841.00 per year, should be included in calculating appellant's pay rate pursuant to these procedures. There is no clarification in the record, which explains the type of pay appellant was receiving and this must be confirmed by the Office before calculating an appropriate pay rate for appellant. He indicated he was a fighter pilot with the Air National Guard from 1979 to the present, which may account for his "military" pay, however, the record is not clear on this issue. Therefore, the Board is unable to determine from the record whether the Office used the proper pay rate in calculating appellant's compensation payments.

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.0900(2) (December 1995).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807(11) (August 2000).

The case will be remanded for further development and a *de novo* decision with detailed findings on how appellant's rate of pay was determined and if appellant's "military" pay should be included in calculating appellant's compensation rate.

The August 23, 1999 decision Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
May 8, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member