U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. CALITRI and DEPARTMENT OF THE NAVY, SUPERVISOR OF SHIPBUILDING, Groton, CT

Docket No. 01-91; Submitted on the Record;
Issued February 19, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has sustained greater than a 33 percent binaural hearing loss for which he has received a schedule award.

On June 27, 1985 appellant, then a 58-year-old industrial engineering technician, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained loss of hearing in both his ears as a result of his federal employment. On August 6, 1986 appellant received a schedule award for a 33 percent binaural hearing loss.

On October 18, 1990 appellant filed a second notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a loss of hearing as a result of exposure to a high level of noise in both his present and prior positions. In a statement submitted with this claim, appellant noted that he filed a prior claim in March 1976, after he first noticed his hearing loss and related it to his employment and then an audiogram of September 21, 1990 revealed a moderate to severe hearing loss in both ears.[1]

At the Office of Workers' Compensation Programs' request, appellant was examined by Dr. Mendell Robinson, a Board-certified otalarygologist, on March 4, 1991, who concluded that appellant had an additional 20 decibel sensorineural hearing loss in the speech frequencies compared to his prior examination in 1986. He opined that this was probably on the basis of early presbyscusis or additional noise exposure. Dr. Robinson stated that appellant was a candidate for hearing amplification. His opinion was based on an audiogram performed on March 1, 1991, which indicated left ear hearing loss at 500, 1,000, 2,000 and 3,000 Hz at 25, 35, 55 and 75, decibels, respectively and right ear hearing loss at 20, 25, 50 and 75 decibels.

[1] Although an official audiogram of this date is not in the record, the results of an audiogram on September 21, 1990 are noted in appellant's health record as showing a loss in the left ear at 500, 1,000, 2,000 and 3,000 hertz (Hz) as 15, 30, 60 and 75 decibels, respectively and hearing loss in the right ear as 10, 20, 50 and 80 decibels, respectively.

On April 4, 1991 the Office medical adviser reviewed the March 1, 1991 audiogram and determined that appellant had sustained a 27 percent binaural hearing loss.

By decision dated April 6, 1991, the Office noted that appellant had demonstrated a 27 percent binaural hearing loss, or less than the award reflecting a 33 percent binaural hearing loss. The Office further noted that if one applied the audiogram submitted by appellant, this would result in a 24 percent binaural hearing loss, again less than 33 percent. Accordingly, the Office rejected appellant's claim for an increase in his schedule award for loss of hearing. However, the Office accepted appellant's claim for medical benefits.

At appellant's request, a hearing was held on December 16, 1997. At the hearing, appellant contended that the Office should use the same formula to determine his current hearing loss as it did to determine his prior hearing loss.

By decision dated February 24, 1998, the hearing representative affirmed the Office's April 6, 1991 decision denying additional benefits.

Appellant appealed that decision to this Board. By decision dated September 30, 1999, the Board remanded this case to the Office for reconstruction and proper assemblage of the case record and issuance of a new decision.

By decision dated February 14, 2000, the Office found that appellant failed to demonstrate a hearing loss greater than the 33 percent for which he had already been compensated.

On March 12, 2000 appellant requested review of the written record. By decision dated July 28, 2000, the hearing representative affirmed the Office's February 14, 2000 decision.

The Board finds that appellant has not established a bilateral hearing loss greater than the 33 percent binaural loss for which he has already received an award under the schedule.

The schedule award provisions of the Federal Employees' Compensation Act[2] and the implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.[4] Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[5] However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal

[2] 5 U.S.C. § 8107 *et. seq.*

[3] 20 C.F.R. § 10.404 (1999)

[4] *See Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[5] 5 U.S.C. § 8107(c)(19).

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.[6]

Pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.), hearing loss is determined by using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up an averaged. Then 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.[7] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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 amount of the binaural hearing loss.[8] The Office by regulations has adopted this standard for evaluating hearing loss.[9]

The Office medical adviser applied the Office's standardized procedures to the March 1, 1991 audiogram performed for Dr. Robinson. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed 20, 25, 50 and 75 decibels, respectively. These decibels were totaled to 170 and were divided by 4 to obtain the average hearing loss at those cycles of 42.5 decibels. The average of 42.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 17.5 decibels which was multiplied by the established factor 1.5 to compute a 26 percent monaural loss of hearing in the right ear.[10] Testing for the left ear revealed decibel losses of 25, 35, 55 and 75 decibels, respectively. These decibel losses were totaled at 190 and then divided by 4 to obtain an average hearing loss at those cycles of 47.5 decibels. This average was reduced by 25 decibels to equal 22.5 decibels, which was multiplied by 1.5 to arrive at a 33.75 percent monaural hearing loss in the left ear. The Office medical adviser then took the lesser of the 2 monaural losses, *i.e.*, the 26 percent loss in the right ear and multiplied it by the established figure of 5 and added it to the 33.75 decibel loss in the left ear and divided this figure by 6 to arrive at a 27 percent binaural hearing loss.[11]

Appellant's argument is that since his earlier award was determined under the third edition of the A.M.A., *Guides*, that the current award should also use the third edition of the A.M.A., *Guides*. Appellant contended that the current audiograms showed an increase in loss of

[6] *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

[7] *See* A.M.A., *Guides* page 224 (4th ed. 1993); *see also Kenneth T. Esther*, 25 ECAB 335 (1974); *Terru A. Wethington*, 25 ECAB 247 (1974).

[8] FECA Program Memorandum No. 272 (issued February 24, 1986).

[9] 20 C.F.R. § 10.404 (1999).

[10] An inconsequential arithmetic error was made here, as 17.5 multiplied by 1.5 equals 26.25. When this figure is used in the formula, appellant will show a 27.5 percent binaural hearing loss instead of the 27 percent binaural hearing loss determined by the Office medical adviser. At any rate, this figure is still less than the 33 percent binaural hearing loss that was determined in the earlier award.

[11] If one were to use the figures for the alleged September 21, 1990 audiogram to the A.M.A., *Guides* (4th ed.), one would arrive at a binaural hearing loss of 23.75 percent, which is less than the figure from the second opinion physician, Dr. Robinson.

hearing and, therefore, he is entitled to additional compensation. This argument is without merit. Pursuant to the Federal (FECA) Procedure Manual:

> "If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the fourth edition. Should the subsequent calculation result in a percentage which is less than the original award, the claim for an additional award should be denied but an overpayment should not be declared. Similarly, awards made prior to November 1, 1993 (the effective date of the fourth edition) should not be reconsidered merely on the basis that the A.M.A., *Guides* have changed."[12]

In the case at hand, appellant's new hearing loss exposure, as calculated by the fourth edition of the A.M.A., *Guides*, amounted to less than a 33 percent binaural hearing loss. Accordingly, appellant has failed to establish greater than a 33 percent binaural hearing loss and the Office properly determined that appellant did not establish entitlement to an increased award.

The decisions of the Office of Workers' Compensation Programs dated July 28 and February 14, 2000 are hereby affirmed.

Dated, Washington, DC
February 19, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(4), (March 1995).