United States Department of Labor
Employees' Compensation Appeals Board

JAMES W. GRAY, Appellant	)	
and	)	**Docket No. 03-2048**
	)	**Issued: December 19, 2003**
TENNESSEE VALLEY AUTHORITY, Chattanooga, TN, Employer	)	

Appearances:
James W. Gray, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 18, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated July 11, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has *de novo* jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a six percent binaural hearing loss, for which he received a schedule award.

FACTUAL HISTORY

On September 4, 2001 appellant, then a 55-year-old machinist, filed an occupational disease claim for hearing loss. He stated that he first became aware of his employment-related hearing loss in 1988. Appellant explained that he had hit his ear with a wrench and, after being treated for over a year, his doctor advised him to have surgery to repair his eardrum. He stated that, since his surgery, his hearing has not returned. The record reflects that appellant worked at the employing establishment between April 1978 and August 1989. During that time, he was

exposed to loud noises from turbines eight hours daily. Appellant additionally had a work-related injury to his eardrum in 1986 which required subsequent surgical repair. A claim for that condition was filed in 1992. Appellant's date of last exposure to noise at the employing establishment was October 2, 1989.

Appellant submitted copies of his automatic audiogram record from 1978, 1985 through 1987 and 1989. An October 30, 2001 audiogram was also submitted.

On November 26, 2001 the employing establishment received appellant's claim for compensation (Form CA-7).

In a December 4, 2001 report, an Office medical adviser reviewed the medical evidence of record and determined that appellant's initial monitoring audiograms of April 5, 1978 showed mild to severe, high tone hearing loss with several of the serial studies through May, 2, 1985 showing a significant progressive worsening. Accordingly, the Office referred appellant to Dr. Linda Mumford, a Board-certified otolaryngologist, for an audiogram and otologic examination. In a report dated January 8, 2002, Dr. Mumford provided the results of her examination and diagnosed a severe high frequency sensorineural hearing loss in the right ear and a history of a traumatic rupture in the left tympanic membrane with (unreadable) and severe profound high frequency sensorineural hearing loss. She opined that the sensorineural hearing loss was due in part to noise exposure in appellant's federal employment. An audiogram dated January 8, 2002 was included with Dr. Mumford's report. The frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the left ear were 20, 25, 25 and 45, decibels respectively; and for the right ear were 30, 25, 20 and 40, decibels respectively. In a report dated January 14, 2002, the Office medical adviser determined that appellant had a six percent bilateral sensorineural hearing loss and authorized a hearing aid.

On January 18, 2002 the Office awarded appellant a six percent schedule award for binaural hearing loss.

By letter dated January 29, 2002, appellant requested an examination of the written record and submitted a January 29, 2002 hearing test. In a decision dated June 4, 2002, an Office hearing representative reviewed the evidence of file and found that appellant had incurred no greater than a six percent binaural hearing loss as a result of factors of his federal employment. The Office hearing representative further found that January 29, 2002 audiometric evidence failed to address the causal relationship between appellant's hearing loss and his employment exposure and did not comply with the protocol and testing requirements of the Office. Accordingly, the Office's decision of January 18, 2002 was affirmed.

In a July 3, 2002 letter, appellant requested reconsideration. Additional evidence submitted included copies of medical records and hearing tests from 1991 through 1992. By decision dated August 6, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

In an April 1, 2003 letter, appellant again requested reconsideration. A copy of his January 29, 2002 audiometric test was resubmitted along with a February 26, 2003 audiometric test.

In an April 23, 2003 report, an Office medical adviser stated that noise-induced hearing loss does not progress after removal from source of hazardous noise and referenced medical literature. The Office medical adviser stated that, as appellant last worked for the employing establishment in 1989, any worsening of hearing after January 8, 2002 was not work related to his federal employment. He further stated that the January 8, 2002 second opinion examination was deemed a valid study.

By decision dated July 11, 2003, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[1] Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.[2] Then, the "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 speech under everyday conditions.[3] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.[4] 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 loss.[5] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[6]

ANALYSIS

In this case, the Office medical adviser applied the Office's standard procedures to the January 8, 2002 audiogram performed for Dr. Mumford. In a report dated January 14, 2002, the Office medical adviser determined that the frequency levels record at 500, 1,000, 2,000 and 3,000 cycles per second of the left ear, 20, 25, 25 and 45, decibels respectively, totaled 115, which divided by 4 yielded the average hearing loss at those frequencies of 28.75 decibels. The Office medical adviser reduced the 28.75 decibels by the 25 decibel "fence" to equal 3.75. He then multiplied 3.75 by the established factor of 1.5 to obtain a monaural loss in the left ear of 5.63 percent. The Office medical adviser totaled the decibel losses at the applicable frequencies for the right ear, 30, 25, 20 and 40, decibels respectively, at 115, which he divided by 4 to obtain the average hearing loss at those frequencies of 28.75. He subtracted the 25 decibel fence from 28.75 to obtain a hearing impairment of 3.75 in the right ear. The Office medical adviser

[1] A.M.A., *Guides* 250 (5th ed. 2001).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Donald E Stockstad*, 53 ECAB _____ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

multiplied 3.75 by the established factor of 1.5 to obtain a 5.63 percent monaural loss in the right ear. To determine the binaural loss, the 5.63 percent loss of the right ear was multiplied by 5 to total 28.15 and was then added to the loss of the left ear of 5.63 to equal 33.78. This total was then divided by 6 to arrive at 5.63, which was rounded up to 6 for a total binaural loss of 6 percent.

The Board has reviewed the findings of the Office medical adviser and finds that he applied the proper standards in the A.M.A., *Guides* to the January 8, 2002 audiogram results and properly determined that appellant had a six percent bilateral hearing loss which was due in part to his federal employment. Since the Office medical adviser's determination of appellant's impairment is based on the examining physician's findings and complies with the A.M.A., *Guides*, the Office properly based its schedule award decision on the medical adviser's evaluation.

There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant has a greater than six percent impairment already awarded that is causally related to his federal employment, which ended August 1989. The Board initially notes that the medical evidence from 1991 through 1992 which appellant submitted in his requests for reconsideration is not relevant to an increase in hearing loss as this evidence predates the January 8, 2002 audiogram upon which appellant received a six percent schedule award. The January 29, 2002 and February 26, 2003 audiograms submitted with appellant's requests for reconsideration failed to provide any indication that such testing was conducted under the protocol established under the A.M.A., *Guides*. There is no evidence that the audiometers were calibrated according to American National Standards Institute Standard S3.6-1996 reference levels,[7] no reference to the type of equipment utilized and the last date of calibration or a discussion addressing the causal relationship between appellant's current hearing and his last employment exposure in August 1989. In an April 23, 2003 report, the Office medical adviser reviewed the medical record and opined that the January 8, 2002 examination was performed under the strict conditions of protocol designed to minimize inaccuracies and misinterpretations and opined it was a valid study. He further stated that noise-induced hearing loss does not progress after removal from the source of hazardous noise. As appellant last worked for the employing establishment in 1989, the Office medical adviser opined that any worsening of hearing loss after January 8, 2002 was not work related. It is appellant's burden to submit sufficient evidence to establish his claim.[8] Accordingly, appellant has not submitted probative, relevant evidence sufficient to establish that he is entitled to a schedule award for hearing loss greater than that already awarded.

CONCLUSION

The Board finds that appellant has not established that his hearing loss exceeded the six percent bilateral hearing loss for which he received a schedule award.

[7] American National Standards Institute, *American National Standards Specification for Audiometers*, ANSI Standard S3.6 – 1996, New York, New York.

[8] *See Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member