U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD W. SINGLETARY and DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, Warner Robins, GA

Docket No. 03-2112; Submitted on the Record;
Issued December 1, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has a ratable hearing loss causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

On February 1, 2002 appellant, a 54-year-old aircraft electrician, filed a claim for benefits alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware that he had sustained a hearing loss causally related to his employment in 1981. He noted that he was exposed to noise from aircraft, power tools and other machines since 1966.

On March 6, 2002 the Office referred appellant and a statement of accepted facts to Dr. Thomas M. Crews, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the March 19, 2002 audiogram for Dr. Crews noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the following thresholds were reported: right ear -- 15, 15, 15 and 25 decibels: left ear -- 15, 15, 15 and 25 decibels. Dr. Crews validated the findings and indicated that appellant sustained a mild bilateral high frequency sensineural hearing loss due to employment factors. On April 8, 2002 an Office medical adviser reviewed Dr. Crews' report and the audiogram taken for him and opined that appellant's hearing loss was nonratable for schedule award purposes under the Office standards for evaluating hearing loss.

In a decision dated April 15, 2002, the Office accepted that appellant had an employment-related hearing loss, but determined that his hearing loss was insufficient to warrant a schedule award. By letter dated May 3, 2002, appellant requested an oral hearing, which was held on October 22, 2002. By decision dated December 12, 2002, an Office hearing representative affirmed the April 15, 2002 Office decision.

By letter dated March 21, 2003, appellant requested reconsideration. He challenged the validity of Dr. Crews' March 19, 2002 evaluation. Appellant argued that the tone of Dr. Crews' test was much louder than those of his other hearing evaluations, all of which showed that he had a compensable hearing loss.

Appellant submitted March 3 and 17, 2003 reports from Dr. Kenneth J. Walker, a Board-certified otolaryngologist and February 25 and March 11, 2003 reports from Annette R. Peppard, an audiologist. In his March 3, 2003 report, Dr. Walker noted progressive hearing loss characterized by poor understanding in noise and poor understanding in general, with bilateral tinnitus. Dr. Walker also stated that audiometric tests revealed sensorineural hearing loss, bilaterally. He judged these tests to be reliable. In his March 17, 2003 report, Dr. Walker indicated that he had administered an audiogram which indicated a bilateral high-frequency sensorineural hearing loss. He indicated that all of appellant's previous reports pertaining to his claimed hearing loss were consistent in showing bilateral hearing loss with the exception of the March 19, 2002 report. Dr. Walker noted a long-term exposure to aircraft and opined that appellant's hearing loss was consistent with long-term noise exposure. In her February 25, 2003 report, Ms. Peppard stated that she had examined and tested appellant on June 22, 2002, the results of which indicated that appellant had a moderate sensorineural bilateral hearing loss. In her March 11, 2003 report, Ms. Peppard reiterated that appellant had a moderate sensorineural bilateral hearing loss with pure-tone averages of 35 decibels in each ear, a rate which creates problems for understanding normal conversation presented at 50 to 55 decibels. Ms. Peppard opined that appellant's hearing would not improve over time.

In an impairment evaluation dated May 19, 2003, an Office medical adviser rejected appellant's contention that Dr. Crews' March 19, 2003 test was either invalid or unreliable, noting that his evaluation was the only one in the record performed in accordance with the standards enunciated in the fifth edition 2001 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office medical adviser rejected the validity of the reports from Dr. Walker and Ms. Peppard, noting that these were not done in accordance with the A.M.A., *Guides*.

By decision dated May 21, 2003, the Office affirmed its prior decisions.

By letter dated July 7, 2003, appellant requested reconsideration. He did not submit any additional medical evidence with his request. By decision dated July 30, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

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

The schedule award provisions of the Federal Employees' Compensation Act and the implementing federal regulation 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. However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office. To ensure consistent results and equal

justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.

The Office evaluates permanent hearing loss in accordance with the standards contained in the fifth edition of the A.M.A., *Guides.* Using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and 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. 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. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.

The Office medical adviser applied the Office's standardized procedures to the March 19, 2002 audiogram performed for Dr. Crews. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses of 15, 15, 15 and 25 respectively. These decibels were totaled to 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.50 decibels. The average of 17.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 15, 15 and 25 respectively. These decibels were totaled at 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.50 decibels. The average of 17.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss in the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser and the consulting audiologist determined that appellant had a nonratable hearing loss in both ears.

Appellant, however, submitted additional evidence suggesting the existence of a ratable hearing loss. Dr. Walker's reports indicated that he had validated the reliability of previously administered audiometric tests, including Ms. Peppard's March 3, 2003 audiogram, which indicated a bilateral high-frequency sensorineural hearing loss. The March 3, 2003 audiogram shows that testing for the right ear at the frequency levels of 500, 1000, 2000, 3,000 cps revealed decibel losses of 40, 25, 35 and 50 respectively. These decibels totaled 150, which, when divided by 4 obtained the average hearing loss at those cycles of 37.50. The average of 37.50 decibels, when reduced by 25 decibels, equals 12.50, which, when multiplied by the established factor of 1.5 computes an 18.75 percent hearing loss in the right ear pursuant to the A.M.A., *Guides*. Testing for the left ear at the frequency levels of 500, 1.000, 2,000 and 3,000 cps revealed decibel losses of 40, 30, 40 and 50 respectively. These decibels totaled 160, which, when divided by 4 obtained the average hearing loss at those cycles of 40 decibels. The average of 40 decibels, when reduced by 25 decibels, equals 15, which, when multiplied by the established factor of 1.5 to computes a 22.50 percent loss in the left ear pursuant to the A.M.A., *Guides*. These calculations, a 22.5 percent left monaural hearing loss and an 18.75 percent right monaural hearing loss totaled a combined 19.375 percent bilateral hearing loss pursuant to this audiogram, which, when rounded off amounts to a 19 percent binaural hearing loss.

The Office medical adviser noted that appellant had submitted the March 3, 2003 audiogram, but found that it was not reliable or probative with regard to demonstrating a ratable hearing loss. In the Office medical adviser's May 19, 2003 report, he stated: "There is poor agreement between the PTA [pure-tone average] and SRT [speech recognition threshold] in the March 3, 2003 audiogram. Such discrepancy is very often functional." The Office medical adviser, however, did not adequately explain his suggestion that the March 3, 2003 audiogram was not reliable, although Dr. Walker indicated that this audiogram was reliable. Thus, the Office did not consider the March 3, 2003 audiogram in determining whether appellant sustained a ratable hearing loss. The Office medical adviser did suggest, however, that another second opinion might be helpful.

The Board finds that the additional medical evidence submitted by appellant, *i.e.*, the March 3 and 17, 2003 reports by Dr. Walker and the March 3, 2003 audiogram and report from Ms. Peppard, indicate that appellant may have sustained a ratable hearing loss. While this medical evidence submitted by appellant is insufficient by itself to warrant a schedule award based on hearing loss, it is sufficient to require further development of the case record by the Office. On remand, therefore, the Office should further develop the medical evidence by requesting that the case be referred to a Board-certified otolaryngologist, for an audiologic and otologic second opinion evaluation of appellant to determine whether he has a ratable hearing loss causally related to factors of his employment. The Board will, therefore, set aside the Office's May 21, 2003 decision for the Office medical adviser to consider whether appellant has a ratable hearing loss. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.[1]

The decision of the Office of Workers' Compensation Programs dated May 21, 2003 is set aside and remanded in accordance with this opinion.

Dated, Washington, DC
December 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[1] As the Board has remanded the Office's hearing loss decision, it need not address the second issue herein, whether the Office refused to reopen the case for merit review.