U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUIS F. BARCENES, JR. and DEPARTMENT OF THE AIR FORCE, DEFENSE CONTRACT MANAGEMENT AGENCY, KELLY AIR FORCE BASE, San Antonio, TX

Docket No. 02-2308; Submitted on the Record;
Issued February 25, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, A. PETER KANJORSKI

The issue is whether appellant has established that he sustained greater than an eight percent binaural hearing loss, for which he received a schedule award.

On May 15, 2001 appellant, then a 57-year-old sheet metal mechanic and quality assurance inspector, filed a claim for bilateral hearing loss, which he attributed to exposure to noise from aircraft engines, rivet guns and metal working tools from May 1980 to the present. Appellant also noted a bilateral ear injury during a mortar attack during his tour of duty as a Marine in Vietnam. Appellant continued to be exposed to hazardous noise in the performance of duty for eight hours per day and was provided with earmuffs and earplugs.

A February 2, 1999 audiogram performed at the employing establishment, showed the following thresholds at 500, 1,000, 2,000 and 3,000 hertz (Hz): on the left, 25, 30, 35 and 40 decibels; on the right; 25, 30, 25 and 35 decibels. Based on this audiogram, on February 3, 1999 Dr. R. Momygenba, an employing establishment physician, diagnosed a bilateral high-frequency hearing loss.

A June 10, 2000 audiogram performed at the employing establishment, showed the following thresholds at 500, 1,000, 2,000 and 3,000 Hz: on the left, 20, 30, 35 and 45 decibels; on the right; 30, 30, 30 and 40 decibels.

A March 10, 2001 audiometric screening at the employing establishment indicated the need for a comprehensive evaluation.

On April 4, 2002 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral hearing loss.

On May 6, 2002 appellant claimed a schedule award for hearing loss.

On January 25, 2002 the Office referred appellant, the record and a statement of accepted facts to Dr. Alan H. Dinesman, a Board-certified otolaryngologist, for a second opinion evaluation.

In a February 19, 2002 report, Dr. Dinesman reviewed the record and acknowledged appellant's work history. He obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 Hz: on the left, 15, 30, 35 and 40 decibels; on the right; 30, 25, 30 and 40 decibels. Speech reception thresholds were at 31 decibels on the right and 30 decibels on the left. He diagnosed a bilateral high-frequency sensorineural hearing loss and tinnitus, due to occupational noise exposure. Dr. Dinesman commented that appellant's hearing loss was "far [in] excess of what would be expected for presbycusis alone." Dr. Dinesman recommended that appellant undergo a hearing aid evaluation.

In a March 11, 2002 report, an Office medical adviser reviewed Dr. Dinesman's February 19, 2002 report. For the right ear the Office medical adviser totaled the frequency losses of 30, 25, 30 and 40 decibels to total 125 decibels. He then divided the total of 125 by 4, resulting in 31.25 decibels. The Office medical adviser then subtracted the "fence" of 25 decibels, leaving a monaural loss of 6.25 decibels. He then multiplied the 6.25 decibels by 1.5 to equal a 9.375 percent monaural hearing loss in the right ear. For the left ear, the Office medical adviser totaled the 15, 30, 35 and 40 decibel losses to equal 120 decibels. He then divided the total of 120 by 4, to equal 30 decibels. The Office medical adviser then subtracted the "fence" of 25 decibels, to equal 5. When multiplied by the 1.5 monaural loss factor, this equaled a 7.5 percent monaural loss of hearing in the left ear, rounded up to 8 percent. The Office medical adviser then multiplied the lesser of the 2 monaural losses by 5, adding the greater loss of 9.375 percent and divided this figure by 6, resulting in an 8 percent binaural hearing loss. The Office medical adviser found that "[n]oise exposure on the job is deemed sufficient to implicate it as a contributing factor" to appellant's hearing loss. The Office medical adviser authorized appellant to receive hearing aids.

By decision dated August 21, 2002, the Office awarded appellant a schedule award for an eight percent loss of hearing in each ear, also known as an eight percent binaural hearing loss. The award, equivalent to 16 weeks of compensation at the three-quarters rate, ran from February 19 to June 10, 2002.

The Board finds that appellant has not established that he sustained greater than an eight percent binaural hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of members or functions of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. To ensure equal justice to all claimants and consistent

[1] 5 U.S.C. § 8107. *See generally* 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404 (1999).

results, good administrative practice necessitates the use of a uniform standard, a single set of tables applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard in evaluating schedule losses[3] as the uniform standard applicable to all claimants.[4]

The Office evaluates hearing loss in accordance with the standards set forth in the A.M.A., *Guides*.[5] Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.[6] Then, the "fence" of 25 decibels is subtracted from that total, because, as the A.M.A., *Guides* points out, losses below 25 decibels do not impair the ability to hear everyday speech under everyday conditions.[7] The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.[8] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.[9] 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.[10] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[11]

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the following frequency levels: 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.[12] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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

[3] *Id.*

[4] *Jimmy B. Newell*, 39 ECAB 181 (1987).

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

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.; see also Daniel C. Goings*, 37 ECAB 781, 784 (1986).

[11] *Donald E. Stockstad*, 53 ECAB ___ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted* (issued August 13, 2002).

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

the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[13]

The Office medical adviser applied the Office's standardized procedures to the February 19, 2002 audiogram, performed for Dr. Dinesman. Testing for the right ear at the frequency levels of 500, 1,000 2,000 and 3,000 Hz revealed decibel losses of 30, 25, 30 and 40. These decibels were totaled at 125 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 6.25, which was multiplied by the established factor of 1.5 to compute a 9.375 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000 2,000 and 3,000 Hz revealed decibel losses of 15, 30, 35 and 40. These decibels were totaled at 120 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 30 decibels. The average of 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 5, which was multiplied by the established factor of 1.5 to compute a 7.5 percent loss of hearing for the left ear, which was rounded up to 8 percent. The Office medical adviser then multiplied the lesser of the 2 monaural losses by 5, adding the greater loss of 9.375 percent and divided this figure by 6, resulting in an 8 percent binaural hearing loss.

Appellant contends on appeal that he has greater than an eight percent binaural hearing loss. However, the Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Dinesman's February 19, 2002 report and audiometric evaluation, resulting in a calculation of an eight percent binaural hearing loss. As noted above, the standards applied to appellant's case are the same standards applied to all employees in hearing loss claims under the Act.[14]

Also, appellant has not submitted audiograms or other medical evidence indicating a greater percentage of hearing loss than that already awarded by the Office.[15] In the absence of such evidence, appellant's contention that he is entitled to a greater schedule award is utterly without merit.

[13] *Id.; see* also *Daniel C. Goings*, *supra* note 10.

[14] Appellant remains entitled to appropriate medical benefits for his work-related condition.

[15] The Board notes that the February 2, 1999 and June 10, 2000 audiograms, showing total decibel losses of 115 of the right and 130 on the left and 130 on the right and 120 on the left respectively, would not have resulted in an increased schedule award.

Consequently, appellant has not established that he sustained greater than an eight percent binaural hearing loss, as he has not submitted any medical evidence indicating a greater percentage of hearing loss than that already awarded.[16]

The August 21, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[16] The record indicates that appellant requested reconsideration by the Office on September 16, 2002. On September 18, 2002 he initially requested a review by the Board. However, appellant's subsequent correspondence indicates that appellant was exercising his right of appeal to the Board. In an October 15, 2002 letter, appellant explained to the Board that he felt the hearing loss percentage awarded was too low and that he wanted a second opinion examination. Appellant did not mention the request for reconsideration in this correspondence and there is no indication of record that the Office took further action on appellant's request for reconsideration following the docketing of the appeal.