

**United States Department of Labor
Employees' Compensation Appeals Board**

ALBERT MOY, Appellant

and

**DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Vienna, VA,
Employer**

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**Docket No. 02-1946
Issued: April 5, 2004**

Appearances:
Albert Moy, 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 July 16, 2002 appellant filed a timely appeal from the May 7, 2002 decision of the Office of Workers' Compensation Programs, which found that he had no ratable hearing loss and which denied authorization for hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review that decision. On appeal, appellant submitted additional evidence to support his claim, including calibration data and a medical opinion on the extent of his hearing loss. Pursuant to 20 C.F.R. § 501.2(c), the Board has no jurisdiction to review this evidence, as it may consider only the evidence that was before the Office at the time of its May 7, 2002 decision.¹

ISSUES

The issues are: (1) whether appellant has a ratable hearing loss, entitling him to a schedule award; and (2) whether the Office properly denied authorization for hearing aids.

¹ Appellant indicates that he will submit the additional evidence to the Office for review.

FACTUAL HISTORY

On August 14, 2001 appellant, then a 51-year-old special agent, filed a claim alleging that he sustained a hearing loss as a result of his firearms training. The Office requested and obtained additional information from both appellant and the employing establishment.

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Kenneth W. Hauch, a Board-certified otolaryngologist, for an otologic examination and audiometric evaluation. In a report dated March 26, 2002, Dr. Hauch related appellant's history of occupational exposure to noise. He noted appellant's complaint of tinnitus in both ears and trouble hearing at meetings, which had gradually worsened over time. He reported that appellant's physical examination was entirely normal. Dr. Hauch advised that audiometric testing on March 25, 2002 revealed a bilateral mild to moderate sensorineural hearing loss from 2,000 to 8,000 hertz (Hz), with peaks at 4,000 Hz on the right and a slightly higher peak of 6,000 Hz on the left. The pattern, he reported, was consistent with a noise-induced hearing loss. He added that appellant had normal tympanograms, normal speech reception thresholds at 0 decibels bilaterally, and word discrimination understanding of 84 percent at 40 Hz on the left and 88 percent at 40 Hz on the right. Dr. Hauch indicated that reliability was good and concluded: "The patient's history and audiometric evaluations are consistent with a noise-induced hearing loss and consistent with his reported exposure to noise in a range over the past 16 years."

The March 25, 2002 audiometrics obtained by Dr. Hauch showed pure-tone air conduction thresholds at 500, 1,000, 2,000 and 3,000 Hz. Appellant's thresholds were, respectively, 0, 10, 30 and 50 decibels on the right and 0, 0, 40 and 45 decibels on the left.

Appellant advised that he saw an otolaryngologist on January 8, 2002 for the ringing in his ears. He submitted a medical report dated January 8, 2002 diagnosing bilateral mid- and high-frequency sensorineural hearing loss with a history of acoustic trauma at work. An audiology report, also dated January 8, 2002, showed pure-tone air conduction thresholds.² Both reports were initialed by an unidentifiable party.³ Appellant alleged that the physician he consulted suggested that a hearing aid would mask the tinnitus and improve his hearing. He also alleged that Dr. Hauch advised that a hearing aid might help.

On April 20, 2002 an Office medical adviser reviewed Dr. Hauch's report and the March 25, 2002 audiometric evaluation.⁴ The medical adviser reported that appellant had

² Office procedures require that a certification must accompany each audiological battery indicating that instrument calibration and the environment in which the tests were conducted met the accreditation standards of the Professional Services Board of ASHA (ANSI S3.6 (1969) and S3.1 (1977), respectively). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600, Exhibit 4 (September 1996). No such certification accompanied the January 8, 2002 audiology report.

³ Medical reports not signed by a physician do not constitute probative medical evidence. *Diane Williams*, 47 ECAB 613 (1996). See generally 5 U.S.C. § 8101(2) ("physician" defined).

⁴ Office procedure requires the Office medical adviser to calculate the percentage of hearing loss if a schedule award is at issue. Federal (FECA) Procedure Manual, Part 2 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.a(6) (September 1994).

considerable high-tone loss in both ears but no ratable hearing loss for the frequencies used for calculating schedule awards. As for whether hearing aids should be authorized, the medical adviser checked “No.”

In a decision dated May 7, 2002, the Office accepted appellant’s claim for a hearing loss due to his occupational noise exposure. The Office found, however, that, because appellant’s hearing loss was not severe enough to be considered ratable, he was not entitled to a schedule award. Further, the Office found that, because the weight of the medical evidence established that he would not benefit from hearing aids, the Office denied appellant’s claim for additional medical benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees’ Compensation Act (hereinafter “Act”) authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. For a complete loss of hearing in one ear, the Act authorizes 52 weeks of compensation. For a complete loss of hearing in both ears, the Act authorizes 200 weeks of compensation.⁵ Partial losses are compensated proportionally.⁶

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁷ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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 a factor of 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 the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

ANALYSIS -- ISSUE 1

According to the most recent audiometric data, obtained by Dr. Hauch on March 25, 2002, appellant’s pure-tone air conduction thresholds at 500, 1,000, 2,000 and 3,000 Hz were 0, 10, 30 and 50 decibels, respectively, on the right, for a total of 90 decibels and an average of 22.5

⁵ 5 U.S.C. § 8107(c)(13).

⁶ *Id.* at § 8107(c)(19).

⁷ 20 C.F.R. § 10.404 (1999).

⁸ A.M.A., *Guides*, 250 (5th ed. 2001).

⁹ *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).

decibels. Appellant's thresholds were 0, 0, 40 and 45 decibels, respectively, on the left, for a total of 85 decibels and an average of 21.25 decibels. The reliability of these measurements was judged to be good.

An average hearing loss below 25 decibels provides no basis upon which to award compensation for permanent impairment because no practical impairment in hearing is considered to exist below that average. Appellant's average hearing loss of 22.5 decibels in the right ear and 21.25 decibels in the left are both below the recognized threshold of compensable loss. The Office accepted appellant's claim for a hearing loss due to his occupational noise exposure, as his federal employment exposed him to hazardous levels of noise and the medical evidence established that he sustained a bilateral mild to moderate sensorineural hearing loss consistent with his occupational exposure. Nonetheless, because the extent of that loss is not ratable under the criteria established by the A.M.A., *Guides*, appellant is not entitled to a schedule award under 5 U.S.C. § 8107. The Board will affirm the Office's May 7, 2002 decision on the issue of entitlement to a schedule award.

On appeal, appellant argues that the A.M.A., *Guides* does not account for tinnitus. The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to 5 percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."¹⁰ As the March 25, 2002 audiometry reveals no unilateral or bilateral hearing impairment, appellant is entitled to no schedule compensation for tinnitus.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹² The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.¹³

ANALYSIS -- ISSUE 2

Appellant submitted no prescription or recommendation for hearing aids by a qualified physician. The Office medical adviser, who reviewed Dr. Hauch's report and the March 25, 2002 audiometric evaluation, concluded that hearing aids were not recommended. Appellant's

¹⁰ A.M.A., *Guides*, 246.

¹¹ As for appellant's argument that high-frequency hearing loss uniquely affects federal law enforcement officers, if he feels his accepted hearing loss has caused him to be disabled for work because it jeopardizes his safety and ability to function in investigations, he may claim compensation for any such wage loss on Form CA-7.

¹² 5 U.S.C. § 8103(a).

¹³ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

allegation that both his otolaryngologist and Dr. Hauch advised that a hearing aid would or might help is hearsay and not a substitute for competent medical evidence. Also, with no practical impairment in his ability to hear everyday sounds under everyday listening conditions, appellant has made no showing that hearing aids would likely cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. Under these circumstances, the Office acted well within its discretion under section 8103(a) to deny authorization for hearing aids.

CONCLUSION

The Board finds that the Office followed standardized procedures in evaluating appellant's hearing loss and properly denied a schedule award for permanent impairment on the grounds that his hearing loss was not ratable. The Board also finds that the Office properly denied authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member