United States Department of Labor
Employees' Compensation Appeals Board

TIMOTHY E. ROBERTS, Appellant	)	
and	)	**Docket No. 04-190**
	)	**Issued: April 27, 2004**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Timothy E. Roberts, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 27, 2003 appellant filed a timely appeal from the August 28, 2003 decision of the Office of Workers' Compensation Programs finding that he failed to establish a ratable hearing loss causally related to factors of his federal employment and that he was not entitled to additional medical benefits for his employment-related bilateral hearing loss. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained a ratable hearing loss causally related to factors of his federal employment; and (2) whether appellant has established that he is entitled to additional medical benefits for his employment-related bilateral hearing loss.

FACTUAL HISTORY

On March 6, 2003 appellant, then a 56-year-old aircraft mechanical engine inspector, filed an occupational disease claim alleging that on October 17, 1976 he first became aware of

his hearing loss. Appellant also alleged that on March 3, 1977 he first realized that his hearing loss was caused or aggravated by his federal employment. Appellant stated that he worked in areas with hazardous noise. He worked with pneumatic tools and in the area of jet engine noise. Appellant retired from the employing establishment on August 31, 2001.

Appellant's claim was accompanied by a description of his position of aircraft mechanical engine inspector and his employment and medical history. He submitted statements indicating that he had done some seasonal hunting and woodwork and his awareness of his hearing loss. He also submitted an occupational noise exposure summary and medical evidence, which included an April 23, 1965 preemployment medical report from the employing establishment and several audiograms performed by the employing establishment.

By letter dated June 11, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim. By letter of the same date, the Office requested that the employing establishment respond to appellant's statements and provide the decibel and frequency levels (noise survey report) for each job site and copies of medical examinations pertaining to hearing or ear problems, including preemployment examinations and all audiograms.

In a June 13, 2003 memorandum, the employing establishment responded to the Office's letter by providing a table listing appellant's noise exposure and indicating that any noise reduction provided by hearing protective devices had not been factored into the noise data and that the single number attenuation factor for the employing establishment's approved ear muffs and earplugs ranged from 7 to 27 decibels A-weighted (dBA) depending on the frequency of the noise.

On June 20, 2003 appellant responded to the Office's June 11, 2003 letter by resubmitting evidence that originally accompanied his occupational disease claim and that was submitted by the employing establishment.

By letter dated June 25, 2003, the Office referred appellant to Dr. Richard B. Dawson, a Board-certified otolaryngologist, for a second opinion medical examination. Dr. Dawson submitted a July 23, 2003 report finding that appellant sustained employment-related sensorineural hearing loss. In response to the question whether hearing aids were recommended, Dr. Dawson stated that they were not recommended at this time. He recommended that appellant be very careful about being exposed to noise and always wear hearing protection. In addition, he suggested that appellant have an annual hearing test to make sure that any adverse effects could be discovered before this problem became worse. He submitted a July 22, 2003 audiogram indicating hearing loss in the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second as 10, 10, 5 and 20 respectively and in the left ear as 10, 15, 10 and 45 respectively. Dr. Dawson concluded that appellant had a zero percent binaural hearing loss based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On August 21, 2003 an Office medical adviser reviewed Dr. Dawson's July 22, 2003 report and audiogram results and a statement of accepted facts. The Office medical adviser

opined that appellant had an employment-related binaural hearing loss that constituted a zero percent bilateral hearing loss based on the fifth edition of the A.M.A., *Guides* and that appellant reached maximum medical improvement on July 22, 2003. The Office medical adviser checked the block marked "no" in answer to the question whether a hearing aid was authorized.

In an August 28, 2003 decision, the Office accepted appellant's claim for hearing loss, but found the evidence of record insufficient to establish that he had a ratable hearing loss due to factors of his employment. Accordingly, the Office determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act. The Office also determined that neither hearing aids, nor additional medical benefits were warranted.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of the 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 scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal 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.[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[4] 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.[5] 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.[6] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[7] 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

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

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

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

[5] *Id.*

[6] *Id.*

[7] *Id.*

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

In this case, the Office medical adviser applied the Office's standardized procedures to the July 22, 2003 audiogram performed by Dr. Dawson. Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 10 and 45 respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain an average hearing loss of 20 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 5 and 20 respectively. These decibel losses were totaled at 45 decibels and were divided by 4 to obtain an average hearing loss of 11.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. Accordingly, the Office medical adviser calculated appellant's hearing loss under the Office standardized procedures to be nonratable for both the right and left ears.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Dawson's July 23, 2003 report. This resulted in a calculation of zero percent binaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable for schedule award purposes.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides for furnishing to an employee injured in the performance of duty "the services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."[10] In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the

[8] *Id.*

[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).

[10] 5 U.S.C. § 8103(a).

shortest amount of time.[11] The Office has administrative discretion in choosing the means to achieve this goal, and the only limitation on the Office's authority is that of reasonableness.[12]

ANALYSIS -- ISSUE 2

In this case, Dr. Dawson stated that appellant sustained employment-related bilateral sensorineural hearing loss but that hearing aids were neither prescribed nor recommended at that time. He only recommended that appellant avoid exposure to noise, always wear hearing protection and undergo annual hearing tests to monitor any further deterioration. The Office medical adviser checked the block marked "no" in answer to the question as to whether a hearing aid was authorized. There is no medical evidence of record either prescribing or recommending that appellant be provided with a hearing aid or any other medical treatment for his employment-related hearing loss. Should the need for such medical care arise in the future, appellant may file an appropriate claim at that time.

CONCLUSIONS

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss causally related to factors of his federal employment. The Board further finds that appellant has failed to establish that he is entitled to additional medical benefits for his employment-related bilateral hearing loss.

[11] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[12] *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member