

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

ANDREW L. BROWN, Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 04-962
Issued: July 8, 2004**

Appearances:
Andrew L. Brown, 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 March 1, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 26, 2003, which found that the medical evidence failed to establish that he had a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this hearing loss case.

ISSUE

The issue on appeal is whether appellant has a ratable loss of hearing causally related to factors of his federal employment.

FACTUAL HISTORY

On September 28, 2002 appellant, then a 67-year-old former electrician, filed an occupational disease claim alleging hearing loss due to exposure to hazardous noise while working on cranes in his ship's engine room for eight hours per day during his federal employment. Appellant asserted that he first became aware of the disease and realized that it

was caused or aggravated by his employment on July 22, 2002. Appellant retired from federal service on April 30, 1993.

In a letter dated October 17, 2003, the Office advised appellant that additional evidence was required in order to establish the claim. The Office requested that appellant submit his employment history for each position held and the sources of noise, number of hours of exposure per day and the use of any safety devices used for protection.

Appellant and the employing establishment submitted statements, personnel records, noise exposure data and audiological test results dated July 23, 2002. In an undated statement from appellant, he indicated that his noise exposure began with his position as an electrician with the employing establishment from 1976 to May 5, 1993 and that he wore earplugs or earmuffs for protection. In a medical report dated July 22, 2002, Dr. Edilberto Pelausa, a Board-certified otolaryngologist, stated that he saw appellant for an assessment of hearing loss for excessive work-related noise exposure. He related that an audiometry was reportedly conducted at appellant's work site which showed some degree of hearing loss although appellant had no supporting documentation. Dr. Pelausa stated: "He underwent audiometry and tympanometry today which shows that he has mild down-sloping to moderate and severe high frequency sensorineural hearing loss. The right ear is slightly worse than the left in the high tones but quite symmetric in the mid to low tones. Discrimination scores are excellent at 100 percent on both sides. Tympanograms show normal middle ear pressures." The physician recommended hearing aids.

On November 15, 2002 the Office referred appellant, the record and a statement of accepted facts to Dr. Alan Keyes, a Board-certified otolaryngologist for a second opinion. In a December 13, 2002 report, Dr. Keyes obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps) for air conduction: on the left -- 10, 5, 15 and 20 decibels; on the right -- 5, 10, 15 and 60 decibels. The physician found pure tone averages of the right and left of 22.5 and 12.5, indicating a 0 percent bilateral hearing impairment. Dr. Keyes diagnosed mild asymmetric sensorineural hearing loss and tinnitus due to noise exposure during appellant's federal employment.

On January 27, 2003 an Office medical adviser reviewed the otologic and audiological findings submitted by Dr. Keyes and determined that while appellant had binaural sensorineural hearing loss he had no ratable hearing impairment as a result of noise exposure in the workplace.

By decision dated February 3, 2003, the Office accepted appellant's claim for hearing loss and payment of medical benefits, however, determined that the weight of the medical opinion evidence regarding the extent of his permanent impairment and entitlement to a schedule award rested with Dr. Keyes who found in his report dated December 13, 2002 that appellant's hearing loss was not severe enough to be considered ratable.¹

¹ Although the Office accepted the claim for payment of medical benefits and Dr. Pelausa recommended hearing aids, it is unclear from the record whether appellant has requested payment for hearing aids. The Office has not issued a decision specifically addressing such claim.

In an undated letter received September 5, 2003, appellant requested reconsideration. Appellant submitted audiological reports from Dr. Pelausa dated July 23, 2003 in support of his request.

By merit decision dated November 26, 2003, the Office denied appellant's request for reconsideration. The Office found that the reports submitted by appellant did not establish a greater hearing loss and that the audiologist's audiogram was uncertified.

LEGAL PRECEDENT

The Federal Employees' Compensation Act schedule award provision set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.² The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter, which rests in the sound discretion of the Office.³ However, as a matter of administrative practice, the Board has stated: "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."⁴

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*).⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

² 5 U.S.C. § 8107.

³ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁴ *Id.*

⁵ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁶ A.M.A., *Guides* 224 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* note at 2.

The Office procedures also require that, “after obtaining all pertinent evidence, the claims examiner will prepare a statement of accepted facts. Unless the case file already contains a reliable medical report which fully meets the Office’s requirements, the claims examiner should refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment.”¹¹

ANALYSIS

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. Keyes’ December 13, 2002 report. The Office medical adviser calculated the extent of hearing loss as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cps were 5, 10, 15 and 60 decibels which totaled 90 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 22.50 decibels. The average of 22.50 decibels was reduced by the “fence” of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cps were 10, 5, 15 and 20 decibels which totaled 50 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 12.50 decibels, which was reduced to 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

The Board finds that the report and audiogram performed on behalf of Dr. Keyes constitute the weight of the medical evidence of record and establishes that as the hearing loss was found to be fewer than 25 decibels, appellant has no ratable loss of hearing in either ear. The Board notes that while Dr. Keyes did state that appellant had tinnitus, the A.M.A., *Guides* states: “tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent for tinnitus in the presence of measurable hearing loss may be added if the tinnitus impacts the ability to perform activities of daily living.”¹² However, the evidence of record does not establish measurable hearing loss or that appellant’s tinnitus impacts the ability to perform activities of daily living. Appellant is therefore not entitled to a schedule award for his tinnitus.

On reconsideration, appellant submitted an audiogram and report from his attending otolaryngologist dated July 23, 2003 and a medical report similar to that which was previously of record. The Office reviewed the evidence and found it to be insufficient to warrant modification. The Board notes that the reports submitted by his physician neither supported that appellant has a ratable hearing impairment entitling him to compensation or benefits nor does it meet the standards for general audiologic evaluation as outlined by Office regulation. The Office has set forth requirements for the medical evidence to be used in evaluating occupational hearing loss claims. The requirements, as set forth in the Office’s Federal (FECA) Procedure Manual provide that the employee undergo audiological evaluation and otological examination; that the

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994).

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

audiological testing precede the otologic examination; that the audiological evaluation and otological examination be performed by different individuals as a method of evaluating reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; a rationalized medical opinion regarding the relationship of the hearing loss to the employment-related noise exposure; and a statement on the reliability of the tests conducted.¹³

As the Office pointed out, much of the required audiological information was missing from the report submitted in support of the claim. Both audiograms of record performed under Dr. Pelausa's direction contained a signature by an audiologist but did not contain his signature. Further, the audiograms were not accompanied with evidence of the audiologist's certification or certification of the equipment or a statement on the reliability of the tests conducted. In the accompanying physician's reports, Dr. Pelausa, appellant's attending otolaryngologist, did not indicate the date and hour of the examination nor the date and hour of appellant's last exposure to loud noise. In his initial report dated July 22, 2002, Dr. Pelausa indicated that appellant did not have his hearing test results from the employing establishment. He indicated that testing demonstrated a mildly to moderately severe sensorineural hearing loss which was down sloping, and that his excessive noise exposure at the employing establishment contributed to the problem. Dr. Pelausa further reported that the remainder of the examination was unremarkable and that his tympanograms were normal.

As the medical evidence submitted by appellant supporting hearing loss did not meet these requirements, such evidence has no evidentiary value in supporting his claim and the Office properly denied his claim and subsequent request for reconsideration.¹⁴ Appellant is not entitled to compensation for his work-related hearing loss under the Act.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing causally related to factors of his federal employment.

¹³ See *Joshua A. Holmes*, 42 ECAB 231 (1990); *George L. Cooper*, 40 ECAB 296 (1988).

¹⁴ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 26, 2003 is affirmed.

Issued: July 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member