

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

ROBERT E. MEARS, Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, Warner Robins, GA,
Employer**

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**Docket No. 04-1638
Issued: November 24, 2004**

Appearances:
Robert E. Mears, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On June 15, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated June 20, 2003 in which the Office found that appellant's employment-related hearing loss was not ratable for schedule award purposes. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant is entitled to a schedule award for his employment-related bilateral sensorineural hearing loss.

FACTUAL HISTORY

On June 24, 2002 appellant, then a 54-year-old aircraft mechanic leader, filed an occupational disease claim, alleging that factors of employment caused bilateral hearing loss and constant ringing in the ears. He stated that he was first aware of the condition and its

relationship to his employment on January 31, 1991. In support of his claim, appellant submitted a May 20, 2002 report in which Dr. Anna Maria Abrigo, a Board-certified pediatrician and employing establishment physician, diagnosed bilateral high frequency loss and tinnitus. In response to Office requests, the employing establishment submitted a report from Lt. Col. Angela S. Williamson, a licensed audiologist, who summarized appellant's employment-related noise exposure and provided a chronological summary of audiograms performed at the employing establishment. She also submitted a number of audiograms performed at the employing establishment, dating from December 16, 1976 to May 22, 2002. The record also contains employing establishment noise surveys and a statement in which Jerry K. Richards, depot overhaul foreman, summarized appellant's noise exposure.

By letter dated September 20, 2002, the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Kenneth J. Walker, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram. Dr. Walker submitted a report dated October 8, 2003 detailing his examination. He diagnosed bilateral sensorineural hearing loss and opined that the condition was due to employment-related noise exposure. He also submitted results of audiometric testing performed by a certified audiologist. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 10, 10, 15 and 50 decibels; left ear 10, 10, 15 and 30 decibels, respectively.

On October 22, 2002 the Office accepted that appellant sustained employment-related bilateral hearing loss. In a report dated October 23, 2002, an Office medical adviser opined that appellant had reached maximum medical improvement on October 8, 2002, the date of Dr. Walker's audiogram, diagnosed employment-related binaural sensorineural hearing loss and opined that this was not ratable for schedule award purposes. He further advised that a hearing aid trial was authorized. On December 5, 2002 appellant filed a schedule award claim.

By decision dated December 18, 2002, the Office found that appellant had no compensable impairment secondary to his employment-related hearing loss. On January 7, 2003 appellant requested a review of the written record. In a decision dated June 20, 2003, an Office hearing representative affirmed the December 18, 2002 decision. In his appeal to the Board, appellant indicated he had retired.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.² The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8107(c).

all claimants.³ The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*). Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added and averaged.⁵ The “fence” of 25 decibels is then 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 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

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award due to his accepted bilateral hearing loss because the only audiogram that comports with established Office procedures,¹⁰ the October 8, 2002 test performed at the behest of Dr. Walker, indicates that his hearing loss was nonratable. While appellant submitted a number of audiograms dating from December 16, 1976 to May 22, 2002, these studies do not

³ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001). In addition to these standards, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office’s Federal (FECA) Procedure Manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; 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 must include: date and hour of examination, date and hour of employee’s last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests. *See* Federal (FECA) Procedure Manual, Part 3 -- Requirements for Medical Reports, *Special Conditions*, Chapter 3.600.8(a) (September 1995); *Raymond Van Nett*, 44 ECAB 480 (1993). The procedural requirements were met in the instant case regarding the October 8, 2002 audiogram.

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald E. Stockstad*, 53 ECAB ___ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)* (issued August 13, 2002).

¹⁰ *Supra* note 5.

conform to the testing requirements found in Office procedures.¹¹ For example, calibration information did not accompany the audiograms nor did the audiograms indicate the date and time of appellant's most recent exposure to loud noise. Furthermore, the recorded values for the examination most recent in time to that of Dr. Walker, the audiogram dated May 22, 2002, likewise does not demonstrate a ratable impairment. The Board therefore finds these studies do not establish that appellant is entitled to a schedule award.

In reviewing appellant's October 8, 2002 audiogram submitted by Dr. Walker, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second on the right revealed decibel losses of 10, 10, 15 and 50 decibels respectively, for a total of 85 decibels. This figure, when divided by 4, results in an average hearing loss of 21.25 decibels. The average of 21.25 decibels when reduced by 25 decibels results in a 0 percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 15 and 30, respectively, for a total loss of 65 decibels. Sixty-five decibels divided by 4 results in an average of 16.25 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear. As this audiogram comports with established Office procedures for these studies,¹² the Board finds that the Office medical adviser properly applied the standardized procedures of the Office to the findings as stated in Dr. Walker's report and the accompanying October 8, 2002 audiogram in determining that appellant's hearing loss was not ratable. Thus, the Office properly determined that appellant was not entitled to a schedule award as the extent of his hearing loss is not ratable.

The Board notes that appellant retains the right to submit a claim for an increased schedule award based on medical evidence indicating the progression of his employment-related hearing loss, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.¹³

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.

¹¹ *Supra* note 5.

¹² *Id.*

¹³ *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2003 be affirmed.

Issued: November 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member