

FACTUAL HISTORY

On December 1, 2000 appellant, then a 63-year-old retired supervisor/leaderman, filed an occupational disease claim, alleging that his hearing loss was employment related.² In support of his claim, he submitted an accompanying statement in which he described the employment conditions he believed caused his condition and audiogram reports dated May 5, 1982, August 4, 1986, June 23 and November 29, 2000.

By letter dated December 21, 2000, the Office informed appellant of the type of evidence needed to support his claim. In a second letter that day, the Office requested that the employing establishment furnish information regarding noise exposure. In response appellant submitted a description of the jobs he had held at the employing establishment. On March 21, 2001 the Office referred appellant, along with the medical record and a statement of accepted facts, to Dr. Charles Hollingsworth, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram.

On May 3, 2001 Dr. Hollingsworth submitted a report detailing his examination. He diagnosed bilateral high frequency sensorineural hearing loss, left worse than right and opined that the condition was due to employment-related noise exposure. The physician further advised that hearing aids were not recommended and submitted results of audiometric testing performed by a certified audiologist the previous day. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following: right ear 5, 5, 0 and 10 decibels; left ear 15, 5, 5 and 55 decibels. On June 1, 2002 the Office forwarded Dr. Hollingsworth's report and the audiometric test results to an Office medical adviser for a calculation of whether appellant was entitled to a schedule award. Following his review, in a report dated June 4, 2001, the Office medical adviser stated that, while the evidence demonstrated that appellant's hearing loss was employment related, it was not ratable for schedule award purposes.

By decision dated September 17, 2001, the Office accepted that appellant sustained employment-related bilateral noise-induced hearing loss. The Office further found that appellant was not entitled to a schedule award because his hearing loss was not severe enough to be ratable and that the medical evidence established that he would not benefit from hearing aids.

Following appellant's request, a hearing was held on October 23, 2002 at which time appellant testified that his hearing had worsened. Subsequent to the hearing, appellant submitted a November 6, 2002 report, received by the Office on November 15, 2002, in which Dr. Hollingsworth advised that appellant had returned for evaluation and that an audiogram performed on October 31, 2002 revealed mild to moderate low and mid-frequency hearing losses with worsening high frequency losses. The physician stated that, when comparing the May 2001 and October 2002 audiograms, the latter revealed a 20 decibel worsening of low and mid-frequency hearing loss and a 20 decibel worsening of high frequency loss. He then concluded that the October 2002 audiogram demonstrated a 1.9 percent hearing impairment on the right and an 18.8 percent impairment on the left, giving a 4.7 percent binaural impairment.

² Appellant had retired effective June 30, 2000.

By decision dated January 7, 2003, the Office hearing representative affirmed the September 17, 2001 decision, finding that appellant's hearing loss was not ratable for schedule award purposes. The hearing representative noted that appellant had submitted additional evidence but determined that it did not indicate that his hearing loss had significantly worsened from the prior audiological testing.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body. 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 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*⁵ (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.⁶ 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.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

³ 5 U.S.C. § 8107(c).

⁴ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁵ 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 August 16, 2000 audiogram.

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

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

ANALYSIS

The Board notes that, at the time the Office issued the September 17, 2001 decision, the record did not establish that appellant was entitled to a schedule award because audiometric testing indicated that his hearing loss was nonratable. The 1982, 1986 and 2000 audiograms do not conform to the testing requirements found in Office procedures¹¹ and the recorded values do not demonstrate a ratable impairment. In reviewing appellant's May 2, 2001 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second on the right revealed decibel losses of 5, 5, 0 and 10, respectively, for a total of 20 decibels. This figure, when divided by four, results in an average hearing loss of five decibels. The average of 5 decibels was then reduced by 25 decibels, which resulted 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 15, 5, 5, and 55, respectively, for a total loss of 80 decibels. Eighty decibels divided by four result in an average twenty decibels when reduced by the twenty-five decibel fence, also results in a zero percent monaural hearing loss of the left ear. Accordingly, the Board finds that the Office medical adviser properly applied the standardized procedures of the Office to the findings as stated in Dr. Hollingsworth's report and the accompanying May 2, 2001 audiogram in determining that appellant's hearing loss was not ratable. 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 finds that this case is not in posture for decision regarding whether appellant is entitled to a schedule award for his employment-related hearing loss. At the hearing appellant testified that his hearing had worsened and he submitted a November 6, 2002 report from Dr. Hollingsworth, who had performed a second opinion evaluation for the Office. Dr. Hollingsworth advised that an October 31, 2002 audiogram was obtained and, upon comparing the May 2001 and October 2002 audiograms, the latter revealed that appellant's hearing had worsened in both ears. He concluded that the October 2002 audiogram demonstrated a 1.9 percent hearing impairment on the right and an 18.8 percent impairment on the left. Dr. Hollingsworth characterized audiometric test results as demonstrating a worsening of appellant's hearing loss since his May 2001 examination. The Board has long recognized that, if a claimant's employment-related hearing loss worsens, he or she may apply for an increased schedule award, or as in the case at hand, a schedule award, for any increased permanent impairment,¹² and the Board finds Dr. Hollingsworth's November 6, 2002 report to be probative evidence that appellant's hearing loss had indeed worsened.

⁹ *Id.*

¹⁰ *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).

¹¹ *Supra* note 5.

¹² *Paul Fierstein*, 51 ECAB 381 (2000).

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to an increased schedule award, the Office shares responsibility in the development of the evidence,¹³ especially in light of the fact that Dr. Hollingsworth provided a second opinion examination for the Office. The case shall therefore be remanded for the Office to obtain a supplemental report from Dr. Hollingsworth concerning the extent of appellant's employment-related hearing loss, to include appropriate audiometric testing results, to determine if he is entitled to a schedule award for his employment-related hearing loss. After such further development as the Office deems necessary, it should issue an appropriate decision on the merits of the claim.¹⁴

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant is entitled to a schedule award for his employment-related hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2003 is set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: September 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ See *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁴ It is noted that appellant submitted evidence subsequent to the January 7, 2003 decision. The Board, however, may not consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).