

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

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**DOUGLAS G. FORD, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, UT, Employer**

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**Docket No. 04-1287  
Issued: September 23, 2004**

*Appearances:*  
*Douglas G. Ford, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On April 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 3, 2003, which denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

**ISSUE**

The issue is whether the Office properly denied appellant's claim for a schedule award for hearing loss.

**FACTUAL HISTORY**

On December 10, 2002 appellant, then a 54-year-old sheet metal mechanic, filed a claim alleging that he sustained a permanent hearing loss while in the performance of duty. Appellant became aware of his hearing loss on June 6, 2000 and was last exposed to hazardous noise on August 22, 2001. He retired in 2002.

In a statement dated May 18, 2000, appellant provided a history of noise exposure while working as a sheet metal mechanic for the U.S. Navy from 1967 to 1970. He was exposed to hazardous noise from power tools, airplanes, boats, cars, truck and cargo handling equipment. From 1970 to June 2002 he worked as a sheet metal mechanic at the employing establishment and was exposed to noise from power tools, jets, external hydraulic pressure machines, air compressors, generators, sheet metal tools, drills, grinders, sanders, riveters, automobiles, cranes, tractors and forklifts. Appellant was provided with ears plugs, safety glasses and earmuffs.

The employing establishment submitted medical records from July 9, 1971 to July 30, 2001 pertaining to its mandatory hearing conservation program. Also submitted were employing establishment audiograms from January 8, 1974 to July 30, 2001 which documented appellant's bilateral sensorineural high frequency hearing loss. In reports dated March 30, 2001 to November 10, 2002, Dr. Loren L. Lewis, a Board-certified otolaryngologist and employing establishment physician, noted that appellant had experienced three significant changes in his hearing loss while employed as a sheet metal mechanic. He noted that appellant's continued exposure to hazardous noise posed a direct threat to appellant's hearing health and recommended that he be removed from his work environment. On November 10, 2002 Dr. Lewis advised that appellant experienced progressive hearing loss from hazardous noise with the first shift in hearing loss occurring in 1987, further permanent shifts in 1997 and 2001 and temporary shifts in 1993 and 1996. Dr. Lewis noted that appellant underwent surgery for an acoustic neuroma which was unrelated to his industrial noise exposure and sustained nerve damage as a result of the surgery. He believed an audiogram performed on January 30, 2001 provided the best measure of appellant's impairment because it was performed prior to his surgery. He indicated that use of hearing tests subsequent to the surgery provided a skewed picture of the true hearing loss that could be related to his hazardous noise exposure at work. The January 30, 2001 audiogram determined that appellant sustained a zero percent monaural hearing loss in both the left and right ears and a zero percent binaural hearing loss.

Appellant's attending physician, Dr. Clough Shelton, a Board-certified otolaryngologist, noted in a report dated June 11, 2001, that appellant had been treated for an acoustic tumor on the left hearing nerve and, as a consequence of this tumor, had no hearing in the left ear. Dr. Shelton recommended appellant work in an environment where he was not exposed to loud noises.

On July 24, 2002 the employing establishment offered appellant a position as a tools and parts attendant which was within his work restrictions and appellant accepted this position on July 26, 2002.

By letter dated January 21, 2003, the Office requested additional medical evidence from appellant, noting that the information submitted was insufficient to establish an injury.

By letter dated July 28, 2003, the Office referred appellant to Dr. Ronald F. Gordan, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Gordan with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Gordan performed an otologic evaluation of appellant on August 11, 2003 and audiometric testing was conducted on the doctor's behalf on August 8, 2003. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 10, 15, 15 and 50 decibels; left ear 120, 120, 120 and 120 decibels. Dr. Gordan determined that appellant was deaf in the left ear due to an acoustic neuroma tumor which was removed surgically by Dr. Shelton. He noted that appellant had a mild high frequency hearing loss in the right ear due to industrial noise exposure. The physician recommended a bi-cross hearing aid from his left ear to his right ear.

On August 29, 2003 an Office medical adviser reviewed Dr. Gordan's report and the audiometric test of August 8, 2003. The medical adviser concluded that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), appellant had no monaural impairment on the right and no impairment on the left for a zero percent bilateral hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's standards for evaluating hearing loss to the results of the August 8, 2003 audiology test. The medical adviser noted that appellant's hearing loss in his left ear was secondary to the acoustic neuroma resection surgery. He recommended bi-cross hearing aids from the left ear to the right ear.

By decision dated September 3, 2002, the Office accepted appellant's claim for hearing loss of the right ear as employment related; however, it determined that the hearing loss was not severe enough to be considered ratable for purposes of a schedule award. The Office did not accept appellant's hearing loss of the left ear as employment related. On September 18, 2003 bi-cross hearing aids were authorized by the Office.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second,

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

the losses at each frequency are added up and averaged.<sup>5</sup> 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.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> 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.<sup>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

### ANALYSIS

An Office medical adviser applied the Office’s standardized procedures to the August 8, 2003 audiogram performed for Dr. Gordan. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 15, 15 and 50 respectively. These decibels were totaled at 90 and were divided by 4 to obtain an average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.

The Board finds that the Office medical adviser applied the proper standards to the August 8, 2003 audiogram. The result is a zero percent monaural hearing loss for the right ear as set forth above.<sup>10</sup> The Office accepted appellant’s claim for right hearing loss due to employment-related noise exposure. The Board finds that the medical evidence is insufficient to establish that appellant’s left ear hearing loss was causally related to his industrial exposure to noise.<sup>11</sup> Appellant submitted several reports from his treating physicians, all of which negated causal relationship of the left hearing loss to his employment-related noise exposure. Rather, the physicians attributed the hearing loss to the surgical removal of an acoustic tumor. Dr. Lewis advised that appellant underwent surgery for an acoustic neuroma of the left ear which was unrelated to his industrial noise exposure and sustained nerve damage as a direct result of the

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *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).

<sup>10</sup> This decision does not affect appellant’s entitlement to medical benefits for the accepted employment injury.

<sup>11</sup> *See Nicolea Bruso*, 33 ECAB 1138 (1982) (Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

surgery. Dr. Shelton, appellant's surgeon, noted that appellant had been treated for an acoustic tumor on the left otologic nerve and as a consequence of this tumor, he had no hearing in the left ear. The Board notes that, on August 11, 2003, appellant was referred to Dr. Gordan who, in a report dated August 11, 2003, determined that appellant was deaf in the left ear due to an acoustic neuroma tumor which was removed surgically by Dr. Shelton. The medical adviser also noted that appellant's hearing loss in his left ear was secondary to the acoustic neuroma rescession surgery. The Board finds that these reports are insufficient to establish that appellant's hearing loss of the left ear is causally related to his industrial exposure to noise. Therefore, he is not entitled to a schedule award for the left ear.

### **CONCLUSION**

The Board finds the Office properly denied appellant's claim for a schedule award for his accepted right ear hearing loss. The Board also finds that appellant has not established that his left ear tinnitus is causally related to his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member