United States Department of Labor
Employees' Compensation Appeals Board

MOISES VASQUEZ, Appellant	)	
and	)	**Docket No. 05-845**
	)	**Issued: August 18, 2005**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christie, TX, Employer	)	

Appearances:
Moises Vasquez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 25, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 3, 2005 denying appellant's schedule award claim on the grounds that there was no ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

This is appellant's second appeal before the Board in this case. By decision dated December 9, 2003, the Board found that the case was not in posture for decision on the issue of whether appellant sustained a hearing loss in the performance of duty. The Board found that the Office hearing representative had incorrectly affirmed the denial of a schedule award on the basis

of whether appellant sustained a ratable hearing loss when causal relationship had not been established. Thus, the Board found that the Office hearing representative's decision was premature and the case was remanded to the Office hearing representative for an appropriate decision on the issue of causal relationship.[1] The law and the facts of the case as set forth in the Board's decision are hereby incorporated by reference.

On September 22, 2004 the Office hearing representative found that further medical development was required on the issue of causal relation. The Office hearing representative requested that the statement of accepted facts be revised to reflect an adequate description of the noise exposure and that appellant be sent for a new second opinion evaluation.[2] Accordingly, the Office hearing representative vacated the Office's decision dated January 15, 2003, which denied causal relationship, and remanded the case for further development and the issuance of a *de novo* decision.

By letter dated November 15, 2004, the Office referred appellant to Dr. George Fisher, a Board-certified otolaryngologist, for a second opinion medical evaluation. Dr. Fisher evaluated appellant on December 13, 2004 and submitted a medical report of the same date providing a diagnosis of mild bilateral high frequency neurosensory hearing loss due to noise exposure from appellant's federal civilian employment. A December 13, 2004 audiogram performed by an audiologist accompanied by Dr. Fisher's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 20, 20, 30 and 30, respectively and in the left ear decibel losses of 15, 15, 25 and 35, respectively. Hearing aids were not recommended.

On January 25, 2005 an Office medical adviser reviewed the medical evidence and found that appellant reached maximum medical improvement on December 13, 2004 but that there was a zero percent binaural sensorineural hearing loss for schedule award purposes. The Office medical adviser further agreed with Dr. Fisher that hearing aids were not needed.

By decision dated February 3, 2005, the Office accepted appellant's claim for bilateral sensorineural hearing loss. The Office, however, found that appellant did not sustain a ratable hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (hereinafter A.M.A., *Guides*) and, thus, determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulation[4] sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members

[1] Docket No. 03-1897.

[2] Dr. Terry Brandt, a Board-certified otolaryngologist, had previously performed a second opinion evaluation on appellant on December 17, 2002.

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[6]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[7] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.[8] 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.[9] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[10] 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.[11] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[12]

ANALYSIS

Dr. Fisher, the second Office referral physician to which appellant was sent, examined appellant and submitted a report dated December 13, 2004 finding that appellant sustained bilateral sensorineural hearing loss related to exposure to noise in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the December 13, 2004 audiogram obtained by Dr. Fisher. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 20, 30 and 30, respectively for a total of 100 decibels. When divided by 4, the result is an average hearing loss of 25 decibels. The average loss of 25 is reduced by the 25 decibel fence to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

[5] 5 U.S.C. § 8107(c)(19).

[6] 20 C.F.R. § 10.404; *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted* (*modifying prior decision*), Docket No. 01-1570 (issued August 13, 2002).

[7] A.M.A., *Guides* at 250.

[8] *Id*.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See Donald E. Stockstad*, *supra* note 6.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 15, 15, 25 and 35, respectively, for a total of 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 decibels is reduced by the 25 decibel fence to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings in Dr. Fisher's December 13, 2004 report and accompanying audiogram. This resulted in a zero percent binaural hearing loss in the right and left ears, which is not ratable. Therefore, the hearing loss is not compensable for schedule award purposes.

Appellant argues on appeal that the same audiologist who performed audiometric testing for Dr. Fisher administered his audiogram for an earlier second opinion examination. However, he has not explained why this is improper. The Board has held that audiograms must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing.[13] An audiologist is not a physician under section 8101(2) of the Act.[14] Both Dr. Fisher and the Office medical adviser reviewed the December 13, 2004 audiogram and found that the audiogram met Office standards. Dr. Fisher specifically opined that the audiogram was a valid indicator of appellant's hearing sensitivity. Appellant has submitted no evidence to establish that the December 13, 2004 audiogram was not valid or did not accurately represent his hearing thresholds. As previously discussed, the Office medical adviser applied the proper standards to the findings in Dr. Fisher's December 13, 2004 report and accompanying audiogram and found that there was a zero percent binaural hearing loss in the right and left ears, which resulted in a nonratable impairment.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

[13] *See Joshua A. Holmes*, 42 ECAB 231 (1990).

[14] *See* 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board