United States Department of Labor
Employees' Compensation Appeals Board

ROBERT G. DAVIS, Appellant	)	
and	)	**Docket No. 05-1650**
	)	**Issued: December 7, 2005**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Boulder City, NV, Employer	)	

Appearances:
Robert G. Davis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 29, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 12, 2005 which granted a schedule award for a three percent bilateral hearing loss. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has established that he has greater than a three percent binaural hearing loss, for which he received a schedule award.

FACTUAL HISTORY

On January 10, 2004 appellant, then a 62-year-old retired electrician, filed an occupational disease claim alleging that he sustained a loss of hearing due to noise exposure in his federal employment. By letter dated February 4, 2004, the Office requested that appellant submit further information. On February 17, 2004 appellant indicated that he worked for the

employing establishment from March 1982 until he retired in June 1999.[1] He noted that the noise sources at his employment consisted of hydroelectric generators, air compressors, vents, motors and machinery associated with the generation of electricity.

The employing establishment submitted the results of appellant's audiograms from August 27, 1985 until January 6, 1998. Appellant's January 6, 1998 audiogram showed frequencies of the right ear at 500, 1,000, 2,000 and 3,000 cycles per second were 25, 10, 45 and 50 decibels and frequencies in the left ear at those levels were 30, 20, 10 and 45 decibels.

By letter dated August 2, 2004, the Office referred appellant to Dr. Richard L. Bailey, a Board-certified otolaryngologist, for an examination. By letter dated August 26, 2004, the Office also referred appellant to Marilyn G. Maschgan for an audiogram. This audiogram was conducted on September 10, 2004. In a report dated September 17, 2004, Dr. Bailey indicated that the September 10, 2004 audiogram revealed "bilateral, symmetrical, moderate to severe sensorineural hearing loss with fair discrimination" that was "congruent with acoustical damaged complicated now by presbycusis."

On November 2, 2004 the Office accepted the claim for bilateral sensorineural hearing loss.

On January 13, 2005 the Office referred the record to an Office medical adviser. In a report dated January 26, 2005, the Office medical adviser stated:

> "I requested the retirement date of [appellant] because [appellant's] hearing showed significant deterioration between 1998 and his examination by Dr. Bailey in 2004. I have now been informed that [appellant] retired in June 1999. Since 1998 [appellant] has had significant deterioration in his hearing. I note that there has been loss in the low frequency tones that are not usually affected by noise exposure. I believe that the audiogram [from January 6, 1998] is the best estimation of [appellant's] hearing at the time he retired. I have utilized this audiogram to calculate a scheduled award for [appellant]. [Appellant] is found to have a[n] 11.3 percent loss in the right ear and a 1.9 percent loss in the left ear for a 3 percent binaural loss."

By decision dated July 12, 2005, the Office issued a schedule award for a three percent permanent loss of bilateral hearing, for six weeks for the period January 6 to February 6, 1998.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body.[2] The Act, however, does not specify the manner in which the percentage loss of a

[1] The Office found the appeal to be timely based on appellant's statement that he was not aware of an employment relationship with regard to his hearing loss until March 6, 2003. *See William C. Oakley*, 56 ECAB ___ (Docket No. 05-140, issued May 6, 2005).

[2] 5 U.S.C. § 8107.

member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.[3] For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*, has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.[4]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[5] Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, 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 in everyday conditions.[7] The remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural 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 binaural hearing loss.[9] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[10]

ANALYSIS

In the present case, the Office medical consultant did not calculate appellant's schedule award based on the audiogram dated September 10, 2004 which was performed at the Office's request. Rather, the Office medical consultant reviewed an earlier audiogram dated January 6, 1998 taken by the employing establishment 17 months prior to appellant's retirement.

Although the Office medical consultant may review any audiogram of record[11] in determining which one most accurately reflects appellant's employment-related hearing loss, the Office should not arbitrarily select one audiogram without explanation.[12] The Board precedent

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[3] *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[4] 20 C.F.R. § 10.404 (1999).

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

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1995).

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

contemplates that the Office will give rationale for selecting one audiogram over another or, in the alternative, it may have another evaluation made of appellant's hearing in order to resolve any inconsistency.[13]

The Office procedures also contemplate that, while noise-induced hearing loss does not typically progress after exposure to noise ceases, an Office medical adviser or consultant will provide a well-rationalized opinion for selecting one audiogram over another.[14] In this case, the Office medical adviser advised that he selected the January 6, 1998 audiogram taken 17 months prior to appellant's retirement, because this audiogram most approximated that hearing loss at the time of retirement. Further, hearing loss after one is removed from the noise is not the result of noise-induced hearing loss. However, the doctor did not provide any medical rationale other than this conclusory statement that appellant had further loss in the low frequency tones that are not usually affected by noise exposure to explain why such a shift in hearing loss would not be caused or aggravated by appellant's employment even after one is removed from the noise.[15] Additionally, the Office medical adviser failed to address why he selected the January 6, 1998 audiogram over the September 10, 2004 audiogram in light of the fact that appellant's employment and noise exposure continued for an additional 17 months after the January 6, 1998 audiogram. This is especially important because this additional exposure may have caused additional hearing loss which was not accounted for in the January 6, 1998 audiogram. Therefore, the Board finds that the medical evidence is insufficiently developed with regard to which audiogram most accurately reflects appellant's employment-related hearing loss.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[16] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[17]

The case will be remanded for the Office to obtain a supplemental report from the Office medical adviser which provides a reasoned medical opinion explaining the basis on which he selected the audiogram which best reflects appellant's occupational hearing loss. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.[18]

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[13] *See John C. Messick*, 25 ECAB 333 (1974).

[14] *See id.*

[15] *Stuart M. Cole*, 46 ECAB 1011 (1995) (where medical consultant should provide a rationalized opinion as to why such a shift in hearing loss would not be caused or aggravated by appellant's employment even after one is removed from the noise); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[16] *John W. Butler*, 39 ECAB 852 (1988).

[17] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.4 (October 1990).

[18] *Robert F. Hart*, 36 ECAB 186 (1984).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the decision of the Board.

Issued: December 7, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board