

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

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**JAMES L. FINCH, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
TINKER AIR FORCE BASE, OK, Employer**

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**Docket No. 05-1804  
Issued: December 19, 2005**

*Appearances:*  
*James L. Finch, 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 August 30, 2005 appellant filed a timely appeal from the August 12, 2005 merit decision of the Office of Workers' Compensation Programs, which found that he did not sustain a ratable hearing loss entitling him to a schedule award and denied authorization for hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUES**

The issues are: (1) whether appellant has established that he sustained a ratable hearing loss entitling him to a schedule award; and (2) whether the Office properly denied authorization for hearing aids.

**FACTUAL HISTORY**

On December 2, 2004 appellant, then a 57-year-old aircraft engine mechanic, filed an occupational disease claim alleging that on December 14, 1989 he first realized that his hearing loss was caused by his federal employment. He stated that in 1989 he worked in jet engine test

cells which involved being exposed to hazardous noise. Appellant noted that his hearing loss was discovered during an annual hearing test. He retired from the employing establishment effective January 3, 2002.

By letter dated December 7, 2004, the Office requested that the employing establishment respond to appellant's allegations and provide information about the sources of noise exposure, the decibel and frequency level of noise at each job site, the period of exposure and the type of ear protection provided. The Office requested a list of all positions held by appellant and dates worked, medical examinations pertaining to hearing or ear problems including a preemployment examination and all audiograms.

By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that he submit additional factual information including a history of his federal and nonfederal employment, military service, exposure to noise for each job and a description of safety devices provided to protect against noise exposure. The Office also requested that he provide the date he first related his hearing loss to his work exposure and explain how he realized this relationship.

The employing establishment submitted a copy of appellant's occupational disease claim form, employment records which included a May 28, 1968 preemployment medical report of Dr. Olma D. Sparks, Jr., an employing establishment physician, and treatment notes from its medical clinic from December 18, 1974 through December 12, 2001 which addressed appellant's various medical conditions. A December 11, 1991 medical report of Dr. John C. Campbell, chief of the employing establishment's audiology department, found a decrease in the significant threshold shift in appellant's hearing. Dr. Campbell stated that this was the first shift for him. He advised appellant to notify the employing establishment about his condition if he believed it was work related. Dr. Campbell further advised that all employees with a second-shift condition should be considered for permanent medical restriction from hazardous noise duties. Reports dated December 13 and 16, 1994 of Dr. Robert A. Shull and July 14 and December 11, 1998 reports of Dr. Glenda Konrath, employing establishment physicians, found that appellant had no medical conditions which placed him at increased risk of material health impairment from specific exposure. Dr. Shull and Dr. Konrath both noted that appellant had no restrictions and did not require any further examination or treatment except an annual audiological evaluation. The employing establishment submitted audiogram results covering the period December 4, 1977 through December 12, 2001, and descriptions of several positions, which included a trainee aircraft jet engine assembler, aircraft jet engine tester, aircraft jet engine mechanic and aircraft engine mechanical work inspector and training leader and appellant's work agreement and job application.

In response, appellant described his exposure to noise while working at the employing establishment. He stated that he did not have any hearing problems prior to June 5, 1968, the date he started working at the employing establishment. Appellant indicated that he had no hobbies which exposed him to loud noise, he was last exposed to the implicated employment factor on January 4, 2002 and he had never filed a claim for any hearing problems prior to the instant claim. He related that he first became aware of his hearing loss during an annual audiometric evaluation. Appellant stated that a December 14, 1989 audiogram revealed significant threshold shift. Prior to this examination, appellant stated that the only clues

regarding his hearing loss were his inability to hear people talking either on the telephone or near his right ear and in 1989 and before, when he noticed frequent ringing in his ears, tinnitus, which usually occurred in quiet areas. Appellant stated that his hearing loss was cumulative over his 35-year career with damage beginning not long after he started working at the employing establishment in 1968. Appellant indicated that, even though ear plugs were used for many years, they were inadequate given the level of noise exposure.

By letter dated March 3, 2005, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Richard B. Dawson, a Board-certified otolaryngologist, for a second opinion medical examination.

In an April 11, 2005 report, Dr. Dawson stated that appellant's hearing at the beginning of his federal employment had presumably reduced over his current hearing ability. He noted that the earliest audiogram which was performed in 1977 showed a mild high tone loss as there was a 45 decibel loss in the right ear at 4,000 and 6,000 hertz (Hz) and a 30 decibel loss in the left ear at 6,000 Hz. He provided findings on physical examination and diagnosed bilateral high-tone sensorineural hearing loss. Dr. Dawson opined that appellant's condition was due, in part, to noise exposure during his federal employment based on the employing establishment's serial audiograms and history of noise exposure. He determined that appellant had a four and one-half percent monaural impairment in the right ear, a zero percent monaural impairment in the left ear and a three-quarter percent binaural impairment. Dr. Dawson recommended annual hearing examinations. He stated that appellant did not need hearing aids at that time. An April 7, 2005 audiogram performed by Dr. Tate Bay, an audiologist, accompanied Dr. Dawson's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 5, 5, 10 and 75, respectively and in the left ear decibel losses of 5, 5, 5 and 10, respectively.

By letter dated May 11, 2005, the Office accepted appellant's claim for noise-induced hearing loss. The Office advised appellant that his case had been forwarded to an Office medical adviser to determine the percentage of permanent impairment due to his employment-related hearing loss.

On May 25, 2005 an Office medical adviser reviewed Dr. Dawson's April 11, 2005 report and audiogram results to find that appellant reached maximum medical improvement on April 7, 2005 and he had a zero percent binaural hearing loss for schedule award purposes. The Office medical adviser stated that appellant's noise exposure at work was sufficient to cause his hearing loss. The Office medical adviser could not explain the difference between Dr. Dawson's four and one-half percent right monaural hearing loss and his finding other than a mathematical error. The Office medical adviser checked the block marked "no" in response to the question as to whether a hearing aid was authorized.

On July 12, 2005 appellant filed a claim for a schedule award.

By decision dated August 12, 2005, the Office denied appellant's claim for a schedule award as he did not sustain a ratable hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). The Office

also found that the weight of the medical evidence established that he would not benefit from hearing aids and, therefore, denied his claim for additional medical benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members 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.<sup>3</sup> 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.<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.<sup>6</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>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</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>9</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

Dr. Dawson, the second opinion specialist, examined appellant and submitted a report on April 11, 2005 finding that he sustained high-tone sensorineural hearing loss related to noise exposure in the course of his federal employment. The Office medical adviser applied the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404 (1999); *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)* Docket 01-1570 (issued August 13, 2002).

<sup>5</sup> A.M.A., *Guides* 250.

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

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

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

<sup>9</sup> *Id.*

<sup>10</sup> *See Donald E. Stockstad*, *supra* note 4.

Office's standardized procedures to the April 7, 2005 audiogram obtained by Dr. Dawson. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 5, 5, 10 and 75, respectively for a total of 95 decibels. When divided by 4, the result is an average hearing loss of 23.75 decibels. The average loss of 23.75 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 5, 5, 5 and 10, respectively, for a total of 25 decibels. When divided by 4, the result is an average hearing loss of 6.25 decibels. The average loss of 6.25 decibels is reduced by 25 decibels 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 properly applied the Office's standards to the findings stated in Dr. Dawson's April 11, 2005 report and accompanying audiogram. This resulted in a calculation of zero percent binaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable for schedule award purposes.

Regarding appellant's allegation that he sustained tinnitus due to factors of his federal employment, the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, the A.M.A., *Guides* instruct that one should add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.<sup>11</sup> As the April 7, 2005 audiogram reveals no unilateral or bilateral hearing impairment, appellant is not entitled to schedule award compensation for tinnitus.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>12</sup> The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

Dr. Dawson opined that appellant sustained an employment-related high-tone sensorineural hearing loss but that hearing aids were not recommended at that time. He

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<sup>11</sup> A.M.A., *Guides* 246.

<sup>12</sup> 5 U.S.C. § 8103(a).

<sup>13</sup> *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

recommended annual audiometric evaluations. The Office medical adviser checked the block marked no in response to the question as to whether a hearing aid was authorized. There is no medical evidence of record recommending that appellant be provided with a hearing aid or any other medical treatment for his employment-related hearing loss. Therefore, the Board finds the Office did not abuse its discretion under section 8103(a) by denying authorization for hearing aids. Should the need for such medical care arise in the future, appellant may file an appropriate claim at that time.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award. The Board further finds that the Office properly denied authorization for hearing aids.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 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