

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

GARY D. SKILLERN, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
WYOMING AIR NATIONAL GUARD,
Cheyenne, WY, Employer**

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**Docket No. 04-753
Issued: February 18, 2005**

Appearances:
Gary D. Skillern, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated December 12, 2003 wherein the Office found that, although appellant had sustained a hearing loss due to employment-related noise exposure, appellant had not sustained a compensable hearing loss entitling him to a schedule award and did not need hearing aids. 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 sustained a compensable hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On March 25, 2003 appellant, then a 60-year-old aircraft loadermaster and aerial port superintendent, filed a claim for occupational disease alleging that he sustained a loss of hearing

at various frequencies. Appellant stated that he first realized that he sustained a hearing loss and that it was employment related on September 12, 1964.¹ By letter dated September 11, 2003, the Office requested that he submit further evidence. Appellant responded in a letter dated September 22, 2003, wherein he, *inter alia*, provided details of his employment with the employing establishment and indicated that he was last exposed to hazardous noise levels associated with his full-time employment in April 1999. A notification of personnel action, Standard Form 50-B, revealed that appellant retired effective April 2, 1999.

The record contains results of annual audiograms conducted on appellant from May 15, 1960 through November 3, 2000. The record also contains letters dated March 12 and September 26, 2003 from representatives of the employing establishment wherein they stated that appellant was exposed to hazardous noise levels during his time with the employing establishment.

On October 23, 2003 the Office referred appellant to Dr. William P. Gibbens, a Board-certified otolaryngologist, for a hearing evaluation. He examined appellant on November 10, 2003 and after reviewing his audiometric tests determined that appellant had mild bilateral neurosensory hearing loss related to noise exposure. Dr. Gibbens noted that the hearing loss was in excess of what would be predicted by presbycusis.

On December 12, 2003 the Office medical adviser reviewed Dr. Gibbens' report and the accompanying audiogram, applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) and determined that appellant had a zero percent ratable binaural hearing loss. He further indicated that aural rehabilitation was not authorized.

By decision dated December 12, 2003, the Office accepted appellant's claim for hearing loss due to employment-related hearing exposure. However, the Office found that he had not established that his hearing loss was severe enough to be considered ratable and also found that any claim for additional medical benefits was denied as the medical evidence did not establish that appellant would benefit from hearing aids.

¹ In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act states that "an original claim for compensation for disability or death must be filed within three years after the injury or death." 5 U.S.C. § 8122(a). Section 8122(b) of the Act provides that, in latent disability cases, the time limitation does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. 5 U.S.C. § 8122(b). If a claim is filed after this period, it is still regarded as timely under section 8122(a)(1) of the Act if appellant's immediate supervisor had actual knowledge of the injury within 30 days of his last exposure to noise. *Larry E. Young*, 52 ECAB 264 (2001). In the present case, the record contains results from annual audiograms done for the employing establishment from May 15, 1960 through November 3, 2000. These audiograms show a progressive loss of hearing. The Board thus finds that the audiograms constitute constructive actual knowledge by appellant's immediate superior of a possible employment-related hearing loss before appellant's retirement and last exposure to employment-related noise, and that appellant's claim is timely under section 8122(a)(1) of the Act. See *Joseph J. Sullivan*, 37 ECAB 526, 527 (1986) (constructive knowledge of possible employment-related hearing loss provided by annual employing establishment audiograms); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801(c) (March 1993).

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulation³ set 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.⁴ 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.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps) the losses at each frequency are added up and averaged.⁷ Then, the “fence” of 25 decibels (dBs) is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.

ANALYSIS

The Office medical adviser concluded that based on the November 10, 2003 report and audiogram of Dr. Gibbens, the Board-certified otolaryngologist to whom appellant was referred by the Office, appellant sustained an employment-related bilateral sensorineural hearing loss. The Office medical adviser properly applied the Office’s standardized procedures to the November 10, 2003 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dB levels of 10, 10, 15 and 40, respectively. These dBs were totaled at 75. When dividing 75 by 4, the average hearing loss is obtained at those cycles of

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

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404; *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).

⁶ A.M.A., *Guides* 250.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

18.75 dBs. The average of 18.75, reduced by 25 dBs, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing of the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dB levels of 15, 10, 20 and 35 respectively. These dBs were totaled at 80. When dividing this figure by 4, the average hearing loss is obtained at those cycles of 20 dBs. The average of 20 is then reduced by 25 dBs (the first 25 dBs 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 in the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser properly determined that appellant had a nonratable hearing loss in both ears.¹¹

The Office denied appellant's claim for additional medical benefits in its December 12, 2003 decision. The Board notes that appellant never claimed medical benefits and did not request hearing aids. No physician indicated that appellant needed hearing aids, and the Office medical adviser specifically noted that aural rehabilitation was not authorized. Accordingly, appellant is not entitled to medical benefits including hearing aids.

CONCLUSION

The Board finds that appellant did not establish that he sustained a compensable hearing loss causally related to factors of his federal employment.

¹¹ The Board notes that, although the Office medical adviser's form noted the complete formula, the Office medical adviser abbreviated his calculations by omitting certain steps. Nevertheless, the Board has been able to complete his calculations.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs denying appellant's claim for a schedule award and for hearing aids dated December 12, 2003 is affirmed.

Issued: February 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member