United States Department of Labor
Employees' Compensation Appeals Board

EDDIE W. HALL, Appellant	)	
and	)	**Docket No. 04-2000**
	)	**Issued: January 13, 2005**
DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, MARINE AIR CORPS STATION, Cherry Point, NC, Employer	)	

Appearances:
Eddie W. Hall, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

Appellant filed an appeal on August 9, 2004 of a July 23, 2004 decision of the Office of Workers' Compensation Programs finding that he had sustained a 16 percent bilateral sensorineural 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 on appeal is whether appellant has more than a 16 percent bilateral sensorineural hearing loss, for which he received a schedule award. On appeal, appellant asserts that he should have been awarded greater compensation due to tinnitus and the long duration of his hearing loss.

FACTUAL HISTORY

On December 9, 2003 appellant, then a 54-year-old production controller, filed an occupational disease claim (Form CA-2) alleging that he sustained a bilateral hearing loss

affecting his speech due to prolonged exposure to hazardous noise at work.[1] Although he first noted a hearing difficulty on April 12, 1988 he was not then "aware that hearing had been affected that much." He did not provide the date on which he realized the condition could have been caused or aggravated by his federal employment. In a December 23, 2003 letter, appellant stated that he had "ringing" in both ears and a concussion in a September 1968 bomb explosion while in military service. Appellant retired from the employing establishment effective January 3, 2004.

Appellant and the employing establishment provided information regarding his occupational noise exposure. Appellant worked as a preservation servicer from 1981 to 1995, with exposure to hazardous noise from air impact wrenches, air guns, hammers, welding machines, engine test cells, a sanding booth, cranes and forklifts. From 1995 until his retirement in January 2004, appellant worked as a production controller, exposed to hazardous noise from blasting machines, steam guns, blade and bearing cleaners and vibration machines. Industrial noise survey data indicated that, from March 11 1994 to November 5, 1998, appellant was exposed to hazardous noise above 84 decibels from a blast booth, pneumatic guns and aircraft engines. The employing establishment noted that appellant was exposed to similar noise levels through 2003 but was provided with earplugs and earmuffs.

Appellant submitted annual audiometric results from 1983 to 2000 obtained as part of a hearing conservation program.[2] Audiometric results from 1983 to 1990 and on December 3, 1992 show a high frequency hearing loss on the right. All other audiometric results from January 17, 1991 through December 9, 2003 show bilateral high frequency hearing losses.[3]

The Office referred appellant, the record and a statement of accepted facts to Dr. Robert H. Hosea, a Board-certified otolaryngologist and second opinion physician,[4] who obtained an audiogram on May 20, 2004 showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps): on the left, 20, 20, 40 and 60 decibels; on the right; 20, 25, 55 and 55 decibels. Tympanometry was within normal limits. In a May 24, 2004 report, Dr. Hosea noted appellant's history of occupational noise exposure and opined that he demonstrated a sensorineural hearing loss in excess of that expected from presbycusis alone. He diagnosed a

[1] Prior to his federal employment, appellant served in the United States Marine Corps infantry from 1967 to 1979 and was exposed to noise from firearms. While serving in Vietnam, he sustained a concussion from a bomb explosion in September 1968 and received compensation from the Department of Veterans Affairs for a 10 percent disability.

[2] Beginning in April 1991, appellant was placed under increased surveillance due to a high frequency hearing loss. The December 13, 2000 audiogram also noted that appellant was "routinely noise exposed."

[3] The employing establishment audiometric results, as well as September 9 and 25, 2003 audiograms and notes from a private audiologist, were not signed or reviewed by a physician. Thus, they do not constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000).

[4] The Office initially referred appellant to Dr. George Beasley, a Board-certified otolaryngologist. However, as Dr. Beasley was apparently unable to perform the requested examination, the Office referred appellant to Dr. Hosea.

primarily high frequency sensorineural hearing loss due to prolonged exposure to hazardous noise at work "in spite of wearing protection." Dr. Hosea recommended hearing aids.[5]

On June 4, 2004 an Office medical adviser noted that the May 20, 2004 audiogram showed decibel losses in the right ear at the frequency levels of 500, 1,000 2,000 and 3,000 cps of 20, 25, 55 and 55 decibels. The medical adviser totaled these losses at 155 decibels then divided the result by 4 to obtain the average hearing loss at those cycles of 38.75 decibels. The average of 38.75 decibels was then reduced by the "fence" of 25 decibels to equal a 13.75 percent loss of hearing for the right ear. The medical adviser then multiplied the 13.75 percent loss by 1.5 to equal a 20.65 percent monaural hearing loss for the right ear. For the left ear, the May 20, 2004 audiogram showed decibel losses of 20, 20, 40 and 60 decibels at the frequency levels of 500, 1,000 2,000 and 3,000 cps. These decibels were totaled at 140 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The adviser then subtracted the fence of 25 decibels, resulting in a 10 percent loss of hearing for the left ear. The medical adviser then multiplied the 10 percent loss by 1.5 to equal a 15 percent monaural hearing loss for the right ear. The medical adviser then calculated the percentage of binaural hearing loss using the formula provided by the A.M.A., *Guides*. He multiplied the lesser of the monaural losses, 15 percent, by a factor of 5 to equal 75, then added the greater monaural loss of 20.63 percent, for a total of 95.63 percent. This result was then divided by 6, for a final result of 15.93 percent, rounded up to a 16 percent binaural hearing loss. The Office medical adviser found that appellant had a 16 percent bilateral sensorineural hearing loss under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and authorized a trial of hearing aids.

By decision dated June 24, 2004, the Office accepted that appellant sustained bilateral sensorineural hearing loss due to noise exposure in the performance of duty. On July 9, 2004 appellant claimed a schedule award pursuant to the accepted hearing loss.

By decision dated July 23, 2004, the Office awarded appellant a schedule award for a 16 percent bilateral noise-induced hearing loss, based on the audiogram obtained by Dr. Hosea and accompanying report.[6]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[7] provides for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which

[5] As these audiograms do not appear to have been reviewed or signed by a physician, they cannot constitute medical evidence in this case. *Vickey C. Randall*, *supra* note 3; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[6] The Office found that appellant had reached maximum medical improvement as of May 20, 2004 and so used that date to determine the proper rate of payment. The schedule award ran from May 20 to December 29, 2004, a period of 32 weeks.

[7] 5 U.S.C. §§ 8101-8193.

rests in the sound discretion of the Office. 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 A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[9] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[10] Then, the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.[11] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.[12] 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.[13] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[14]

ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the May 20, 2004 audiogram performed for Dr. Hosea. The medical adviser noted that testing for the right ear at the frequency levels of 500, 1,000 2,000 and 3,000 cps revealed decibel losses of 20, 25, 55 and 55 decibels. These decibels were totaled at 155 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 38.75 decibels. The average of 38.75 decibels was then reduced by the "fence" of 25 decibels to equal a 13.75 percent loss of hearing for the right ear. This 13.75 percent loss was then multiplied by 1.5 to equal a 20.65 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000 2,000 and 3,000 cps revealed decibel losses of 20, 21, 40 and 60 decibels. These decibels were totaled at 140 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The adviser then subtracted the fence of 25 decibels, resulting in a 10 percent loss of hearing for the left ear. This 10 percent loss was multiplied by 1.5 to equal a 15 percent monaural hearing loss for the right ear. To calculate the percentage of binaural hearing loss, the Office medical adviser used the appropriate formula as provided by the A.M.A., *Guides*, multiplying the lesser of the monaural losses, 15 percent, by a factor of 5, for a result of 75. The medical adviser then added the greater monaural loss of 20.63 percent, for a total of 95.63. This result of 95.63 was then divided by 6, for

[8] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[10] *Id*.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Donald E. Stockstaad*, 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).

a final result of 15.93 percent, rounded up to a 16 percent binaural hearing loss. The Office medical adviser determined that appellant had a 16 percent binaural hearing loss.

As Dr. Hosea's audiogram was the sole report from a physician and complied with the Office's procedural requirements, the Office properly used it to rate appellant's hearing loss.[15] Appellant's claim for hearing loss was accepted and properly rated at a 16 percent binaural hearing loss. Appellant did not submit sufficient medical evidence demonstrating a greater percentage of impairment.

On appeal, appellant asserted that he was entitled to additional compensation due to tinnitus. The A.M.A., *Guides* states that "tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent for tinnitus in the presence of measurable hearing loss may be added if the tinnitus impacts the ability to perform activities of daily living."[16] However, Dr. Hosea did not mention symptoms of tinnitus or diagnose tinnitus in his May 24, 2004 report. There are no other probative medical reports of record mentioning or diagnosing tinnitus. Appellant has not submitted medical evidence diagnosing tinnitus impacting his ability to perform activities of daily living, establish entitlement to an additional percentage of impairment due to tinnitus.[17]

CONCLUSION

The Board finds that appellant has not established that he has more than a 16 percent bilateral sensorineural hearing loss, for which he received a schedule award.

[15] *James A. England*, 47 ECAB 1115 (1995).

[16] A.M.A., *Guides* (5th ed. 2001) at Chapter 11.2a, "Criteria for Rating Impairment Due to Hearing Loss," p. 246.

[17] *Robert E. Cullison*, Docket No. 04-641 (issued June 2, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 9 and July 23, 2004 are affirmed.

Issued: January 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member