United States Department of Labor
Employees' Compensation Appeals Board

HAROLD B. STEINHOFF, SR., Appellant	)	
	)	**Docket No. 05-165**
and	)	**Issued: May 11, 2005**
DEPARTMENT OF THE NAVY, PEARL HARBOR NAVAL SHIPYARD, Honolulu, HI, Employer	)	

Appearances:
Harold B. Steinhoff, Sr., 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 17, 2004, granting him an award of compensation for eight percent monaural hearing loss of the right ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly found that appellant had no more than an eight percent monaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On June 27, 2003 appellant, then a 62-year-old pipe fitter foreman, filed a claim for compensation benefits alleging that he sustained permanent hearing loss while in the performance of duty. He retired on July 3, 1991.

Appellant and the employing establishment submitted employing establishment audiograms taken at the employing establishment from August 31, 1960 to October 24, 1990.[1] The audiograms revealed bilateral mild high frequency hearing loss worse on the right. The audiogram performed closest in time to his July 1991 retirement was dated October 24, 1990. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 15, 25, 30 and 50 decibels; left ear 10, 20, 10 and 50 decibels. A statement of accepted facts dated May 3, 2004 noted that from September 1960 to 1966 appellant was a pipe fitter apprentice, from 1966 to 1971 a pipe fitter journeyman, from 1971 to 1983 a pipe fitter foreman and from 1983 to 1991 a pipe fitter general foreman. During these periods of time he was exposed to noise from chipping, grinding, riveting, hammering, sandblasting and machinery at occupational noise levels above 85 decibels. Appellant advised that he was given ear plugs in 1960, that were unfitted and which he did not always wear around loud noises. He noted that since his retirement he has worked in a warehouse not exposed to loud noise.

By letter dated May 13, 2004, the Office referred appellant to Dr. Meredith K.L. Pang, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Pang with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Pang performed an otologic evaluation of appellant on June 17, 2004 and audiometric testing was conducted on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed the following: right ear 25, 35, 65 and 70 decibels; left ear 25, 30, 35 and 60 decibels. Dr. Pang determined that appellant sustained bilateral mild, low and severe high frequency sensorineural hearing loss related to or aggravated by hazardous employment noise exposure. She advised that appellant sustained hearing loss of 35.6 percent on the right and 18.8 percent on the left and a binaural hearing loss of 21.6 percent. Dr. Pang noted that an audiogram performed closest to the date of appellant's retirement was dated October 24, 1990 and revealed 7.5 percent hearing loss on the right and 0 percent on the left.

On July 14, 2004 Dr. David Schindler, an Office medical consultant, reviewed Dr. Pang's report and the audiometric test of June 17, 2004 performed on the physician's behalf and an October 24, 1990 employing establishment audiogram. The medical adviser based appellant's schedule award on the audiogram dated October 24, 1990, because this audiogram most approximated the hearing loss at the time of retirement as it was performed nine months prior to his retirement. Appellant advised that further hearing loss that occurred after he was removed from the noise in 1991, was not the result of noise-induced hearing loss and was not causally related to his employment duties. The medical adviser concluded that in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001), appellant had an eight percent monaural hearing loss of the right ear and a zero percent monaural hearing loss in the left ear. The medical adviser noted that hearing aid for the right ear was recommended based on the audiogram of October 24, 1990.

[1] These audiograms appear to have been performed as part of an employing establishment hearing conservation program.

By a decision dated August 17, 2004, the Office granted appellant an award for eight percent monaural hearing loss of the right ear. The period of the award was from June 17 to July 16, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 implementing regulation as the appropriate standard for evaluating schedule losses.[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 cps 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 under everyday conditions.[7] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing 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 the 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 June 17, 2004, which was performed on behalf of Dr. Pang.

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Id.*

[5] A.M.A., *Guides* at 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).

Rather, the Office medical consultant reviewed an earlier audiogram dated October 24, 1990 taken by the employing establishment nine months prior to appellant's retirement.

Although Dr. Schindler, the Office's 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 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 the 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, Dr. Schindler advised that he selected the October 24, 1990 audiogram,[15] taken nine months prior to appellant's retirement, because "this audiogram most approximates 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 additional medical rationale other than this conclusory statement 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.[16] Additionally, Dr. Shindler failed to address why he selected the October 24, 1990 audiogram over the June 17, 2004 audiogram taken on behalf of Dr. Pang, the Office's referral physician, in light of the fact that appellant's employment and noise exposure continued for an additional eight months after the October 24, 1990 audiogram. This is especially important because this additional exposure may have caused additional hearing loss which was not accounted for in the October 24, 1990 audiogram.

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[11] Federal (FECA) Procedural 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).

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

[14] *See id.*

[15] The Board has held that an audiogram prepared by an audiologist must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing. *See Joshua A. Holmes*, *supra* note 12; *Rubel R. Garcia*, 33 ECAB 1171, 1175 (1982) (where the Board pointed out that there was no error by the Office in determining the percentage of appellant's hearing loss based on an audiogram report prepared by an audiologist, since an Office medical adviser, who is a physician, had certified the audiologist's audiogram as being accurate and had then properly determined the percentage of appellant's hearing loss utilizing the approved standardized procedures). In this case, the Office medical adviser, Dr. Schindler, is not precluded from considering the October 24, 1990 audiogram, which appears to be prepared by an audiologist with an employing establishment hearing loss conservation program, in determining the percentage of appellant's hearing loss as he had certified the audiologist's audiogram as being accurate.

[16] *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).

Therefore, 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.[17] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[18]

Consequently, the case must be remanded for the Office to obtain a supplemental report from the Office medical adviser which provides a detailed reasoned medical opinion explaining why such a shift in appellant's hearing loss would not be caused or aggravated by appellant's employment even after he was removed from the noise and why he selected the October 24, 1990 audiogram as the record reveals that appellant had additional exposure to noise for approximately eight months thereafter prior to retiring in July 1991. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.[19]

CONCLUSION

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

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

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

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

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2004 decision of the Office of Worker' Compensation Programs is set aside and the case remanded for further proceedings consistent with the decision of the Board.

Issued: May 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member