

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

DIANA SANCHEZ, Appellant

and

**DEPARTMENT OF THE AIR FORCE, KELLY
AIR FORCE BASE, San Antonio, TX, Employer**

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**Docket No. 06-544
Issued: April 3, 2006**

Appearances:
Diana Sanchez, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 20, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing loss decision dated March 29, 2005 and denial of modification dated December 23, 2005. Under 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 has a ratable hearing loss causally related to factors of her federal employment.

FACTUAL HISTORY

Appellant, a 62-year-old inventory management specialist, filed a claim for benefits on February 13, 2002, alleging that she sustained a bilateral hearing loss causally related to factors of her federal employment. Appellant first became aware she sustained a hearing loss causally related to her employment on April 1, 2001. She retired from federal employment on April 7, 2001.

By letter dated September 10, 2002, the Office asked the employing establishment for additional information pertaining to appellant's alleged employment-related exposure to loud noise. The Office asked the employing establishment to describe the locations of job sites where the exposure allegedly occurred; the sources of exposure to noise; the decibel level and frequency level for each job site; and the period of exposure, hours per day and days per week of such exposure. By letter dated October 16, 2002, the employing establishment advised the Office that it was unable to obtain the additional information requested. The employing establishment stated that its efforts to contact former supervisors were unsuccessful and, due to the closure of Kelly Air Force Base, it was very difficult to obtain information to verify appellant's allegations.

The Office issued a statement of accepted facts dated November 13, 2002 in which it noted that "[appellant] was not exposed to hazardous noise. She was not in a hearing conservation program. If [appellant] had been employed in a high noise environment she would have been part of the hearing conservation program."

On November 20, 2002 the Office referred appellant and a statement of accepted facts to Dr. Alan Dinesman, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the December 10, 2002 audiogram for Dr. Dinesman noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the following thresholds were reported: right ear -- 15, 15, 25 and 15 decibels; left ear -- 20, 25, 20 and 25 decibels. Dr. Dinesman indicated that appellant's hearing loss was not due to any employment factors and concluded that she had not sustained any ratable hearing loss attributable to noise exposure in her federal employment.

In a decision dated January 29, 2003, the Office found that appellant had not established that she sustained any hearing loss causally related to factors of her federal employment.

Appellant filed an appeal to the Board.¹ By order dated August 30, 2004, the Board set aside the January 29, 2003 Office decision, noting that it was not able to verify the November 13, 2002 statement of accepted facts which found that appellant was not exposed to hazardous noise. The Board remanded the case for the Office to obtain information regarding appellant's personnel files and medical records in order to accurately gauge her exposure to loud noise while working at the employing establishment.

In an undated letter received by the Office on November 29, 2004, the employing establishment stated that it was unable to obtain documentation confirming that appellant was employed at Kelly Air Force Base prior to its closing. However, the Office received a letter from Mike Cuellar, appellant's former supervisor at Kelly Air Force Base, on January 5, 2005. Mr. Cuellar confirmed that appellant was exposed to loud noise while working at the employing establishment. Mr. Cuellar stated that he worked with appellant at Kelly Air Force Base from 1971 through 1973 in Building 329, which had a large machine shop, a gas turbine engine disassembly and assembly area, an engine parts cleaning area and a welding shop. He asserted

¹ Docket No. 04-693 (issued August 30, 2004).

that the employing establishment conducted many acoustic surveys of Building 329 which revealed that employees had been exposed to excessive noise levels.

On February 17, 2005 the Office amended the statement of accepted facts to find that appellant was exposed to noise from aircraft, machine shops, sheet metal repair, engine repair shops and aircraft engines.

In a memorandum dated February 18, 2005, an Office medical adviser found on the basis of Dr. Dinesman's December 10, 2002 audiogram results and calculations that appellant had a zero percent binaural hearing loss.

In a decision dated March 29, 2005, the Office found that appellant had a hearing loss causally related to her federal employment. However, the extent of the loss was not ratable for purposes of a schedule award.

By letter dated September 16, 2005, appellant requested reconsideration.

Appellant submitted reports dated December 11, 2001 and September 8, 2005 from Dr. Susan A. Marena, a specialist in otolaryngology, and a September 6, 2005 report from Dr. Joel E. Rutstein, Board-certified in internal medicine. Dr. Marena opined that appellant had a 41 percent binaural hearing loss and that appellant had a binaural hearing loss of 21.25 percent as of October 2001. Dr. Marena did not provide any audiometric results and calculations with her reports. Dr. Rutstein stated that appellant neglected to submit her Department of Labor report due to various medical issues.

By decision dated December 23, 2005, the Office denied modification of the March 29, 2005 decision.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act and the implementing federal regulations set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office. To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. (5th ed. 2001). Using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged. Then a "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 sounds under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. 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. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.

ANALYSIS

An Office medical adviser applied the Office's standardized procedures to the January 9, 2003 audiogram obtained by Dr. Dinesman, a Board-certified otolaryngologist. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses in the right ear of 15, 15, 25 and 15 decibels respectively. These total 70 decibels which, when divided by 4, obtain an average hearing loss of 17.50 decibels. The average of 17.50 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 totals a 0 percent hearing loss in 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, 25, 20 and 25 respectively. These totaled 90, which, when divided by 4, obtains an average hearing loss of 22.50 decibels. The average of 22.50 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 totals a 0 percent hearing loss in the left ear. The Office medical adviser therefore determined that appellant did not sustain a ratable hearing loss due to noise exposure in her federal employment.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides*, to determine that appellant has a zero percent binaural hearing loss. The Board will affirm the March 29, 2005 Office decision finding that appellant did not sustain a ratable hearing loss and denying her claim for a schedule award.

Following the March 29, 2005 decision, appellant requested reconsideration and submitted reports from Dr. Marenda and Dr. Rutstein. These reports, however, did not provide audiograms certified by a physician as accurate, and are therefore of diminished value in establishing a ratable hearing loss.² Although Dr. Marenda indicated that appellant had a bilateral hearing loss of 21.25 percent, she failed to submit the audiometric evidence which formed the basis for this finding. As there is no other probative medical evidence establishing that appellant sustained a ratable hearing loss, the Office properly found that she was not entitled to a schedule award. The Board will affirm the December 23, 2005 Office decision.

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing loss causally related to factors of her federal employment.

² See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the December 23 and March 29, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: April 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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