

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

D.C., Appellant)

and)

DEPARTMENT OF THE ARMY, ANNISTON)
ARMY DEPOT, Anniston, AL, Employer)

Docket No. 06-883

Issued: August 1, 2006

Appearances:

D.C., pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JURISDICTION

On March 8, 2006 appellant filed a timely appeal from the December 5, 2005 merit decision of the Office of Workers' Compensation Programs, denying modification of the finding that his hearing loss in the left ear was not causally related to factors of his employment. He also appeals the Office's February 3, 2006 merit decision which found that he did not sustain a ratable hearing loss in the right ear 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 case.

ISSUES

The issues are: (1) whether appellant's hearing loss in his left ear was causally related to factors of his employment; (2) whether appellant has established that he sustained a ratable hearing loss in the right ear entitling him to a schedule award; and (3) whether the Office properly denied authorization for hearing aids.

FACTUAL HISTORY

On March 15, 2005 appellant, then a 58-year-old quality assurance specialist, filed an occupational disease claim alleging that on May 1, 2005 he first became aware of his hearing

loss in both ears. He further alleged that on September 13, 2004 he first realized that his hearing loss was caused by his federal employment. Appellant stated that he was exposed to noise five hours a day, five days a week.

In support of his claim, appellant submitted numerous documents including, a history of his exposure to noise at the employing establishment from August 1976 through the date of the filing of his claim and his employment at other jobs from April 1968 through May 4, 1975. He indicated that he was exposed to loud noise while hunting, fishing and mowing the lawn. Appellant wore hearing protection at work when required. He submitted employing establishment audiogram results covering intermittent dates from August 19, 1976 through September 13, 2004. An audiogram performed by Dr. Paul V. Stephens, an audiologist, on September 13, 2004 revealed that appellant had bilateral sensorineural hearing loss. He stated that the pattern of the hearing loss was consistent with a combination of exposure to high-intensity noise levels and presbycusis.

In a March 15, 2005 memorandum, the employing establishment stated that appellant had not been exposed to significant noise since 1980 as he had not engaged in any job activities with enough intensity and duration of noise to cause a compensable hearing loss. It noted that a 1984 audiogram showed no compensable hearing loss. The employing establishment stated that appellant's noise exposure from 1976 to 1980 was not significant to cause occupational hearing loss and by his own admission, he wore hearing protection. It further stated that a 2004 audiogram revealed that his hearing loss was consistent with a combination of exposure to high-intensity noise and presbycusis and that he had a significant preexisting loss at the 3,000 hertz (Hz) frequency.

By letters dated April 7 and June 22, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that he submit detailed information regarding his exposure to noise in the workplace and use of hearing protection.

The Office received a letter dated June 29, 2005 in which the employing establishment advised that appellant was exposed to noise five hours a day and wore foam earplugs when noise protection was required.

By decision dated September 7, 2005, the Office denied appellant's claim. It found that he failed to establish that he sustained an injury while in the performance of duty. On September 14, 2005 appellant requested reconsideration.

By letter dated November 4, 2005, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions to Dr. Jeffrey S. Robertson, a Board-certified otolaryngologist, for a second opinion medical examination.

In a November 18, 2005 medical report, Dr. Robertson stated that appellant's hearing in the right ear at the beginning of his federal employment was normal based on an August 19, 1976 audiogram. The audiogram revealed a mild to moderate high frequency sensorineural hearing loss in the left ear. Based on a comparison to present audiometric findings, he found that appellant showed a bilateral mild-to-high frequency mild-to-severe sensorineural hearing loss. The loss in the left ear was consistent with normal presbycusis. Dr. Robertson stated that

findings related to the right ear were in excess of normal presbycusis. He opined that appellant's workplace exposure was sufficient as to intensity and duration to have caused his hearing loss. Dr. Robertson noted that appellant admitted to firing weapons, fishing and running a lawn mower without using ear protection at times. He provided findings on physical examination and diagnosed mild-to-high frequency bilateral sensorineural hearing loss. Dr. Robertson found that only hearing loss in appellant's right ear was due, in part, to noise exposure during his federal employment. He stated that hearing loss in the left ear was consistent with normal presbycusis and that high frequency loss was present prior to appellant's employment at the employing establishment. Hearing loss in the right ear was consistent with hazardous noise exposure and that the severity of the loss in high frequencies exceeded normal presbycusis. Dr. Robertson recommended "binaural hearing aid amplification," ear protection when working in hazardous noise levels and an annual audiological assessment. A November 18, 2005 audiogram performed by Dr. B. McClung, an audiologist, accompanied Dr. Robertson's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 25, 25 and 35, respectively and in the left ear decibel losses of 25, 30, 30 and 60, respectively.

By letter dated December 5, 2005, the Office advised appellant that it accepted that he sustained right-sided sensorineural hearing loss based on Dr. Robertson's November 18, 2005 report. On the same date, the Office issued a decision, modifying the September 7, 2005 decision to reflect that appellant's noise-induced sensorineural hearing loss in the right ear was work related. The Office found that the hearing loss of the left ear was not causally related to factors of appellant's employment based on Dr. Robertson's report.

On December 7, 2005 an Office medical adviser reviewed Dr. Robertson's November 18, 2005 report and audiogram results to find that appellant reached maximum medical improvement on November 18, 2005. He diagnosed right sensorineural hearing loss and determined that appellant had a zero percent hearing loss of the right ear for schedule award purposes. The Office medical adviser stated that he did not calculate an impairment rating for hearing loss in appellant's left ear due to the finding that he did not sustain any work-related hearing loss in this ear. He checked the block marked no in response to the questions as to whether a hearing aid was authorized and whether an examination by a specialist was recommended.

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

By decision dated February 3, 2006, 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* (5th 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

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific

¹ 5 U.S.C. §§ 8101-8193.

condition for which compensation is claimed are causally related to the employment injury.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁵

ANALYSIS -- ISSUE 1

Appellant submitted audiogram results from the employing establishment and Dr. Stephens, an audiologist, which indicated that he had hearing loss in the left ear. However, the audiograms were not accompanied by a medical narrative report from a physician interpreting the results.⁶ Therefore, the Board finds that the audiogram results of the employing establishment and Dr. Stephens are insufficient to establish appellant's claim.

Dr. Robertson, the second opinion specialist, examined appellant and submitted a report on November 18, 2005, finding that his hearing loss in the left ear was not work related. He explained that it was consistent with normal presbycusis and that high frequency loss was present prior to appellant's employment at the employing establishment. Dr. Robertson further explained that appellant, according to his own admission, did not use ear protection while firing weapons, fishing and running a lawn mower. As he did not find a causal relationship between the hearing loss in appellant's left ear and factors of his employment, his report does not establish appellant's claim.

Because there is no rationalized medical evidence of record establishing that appellant's hearing loss was causally related to factors of his employment, the Board finds that he has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Act⁷ and its implementing regulation⁸ 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

² *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *See Joseph T. Gulla*, 36 ECAB 516 (1985).

⁶ *See Joshua A. Holmes*, 42 ECAB 231 (1990); *Alfred Avelar*, 26 ECAB 426 (1975).

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

⁸ 20 C.F.R. § 10.404.

compensation is paid in proportion to the percentage of loss of use.⁹ 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.¹⁰

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹¹ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.¹² 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.¹³ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁴ 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.¹⁵ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁶

ANALYSIS -- ISSUE 2

Dr. Robertson, the second opinion specialist, found that appellant sustained sensorineural hearing loss in the right ear related to noise exposure in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the November 18, 2005 audiogram obtained by Dr. Robertson. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 25, 25 and 35, respectively for a total of 100 decibels. When divided by 4, the result is an average hearing loss of 25 decibels. The average loss of 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 right ear.

The Board finds that the Office medical adviser properly applied the Office's standards to the findings stated in Dr. Robertson's November 18, 2005 report and accompanying audiogram. This resulted in a nonratable hearing loss in the right ear, which is not compensable for schedule award purposes.

⁹ 5 U.S.C. § 8107(c)(19).

¹⁰ *Supra* note 8; *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

¹¹ A.M.A., *Guides* 250.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See Donald E. Stockstad*, *supra* note 10.

LEGAL PRECEDENT -- ISSUE 3

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.¹⁷ The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.¹⁸

ANALYSIS -- ISSUE 3

Dr. Robertson recommended binaural hearing aid amplification for appellant's hearing loss. After having reviewed Dr. Robertson's findings and accompanying audiogram, the Office medical adviser checked the block marked no in response to the question as to whether a hearing aid was authorized. The Board finds that the case is not in posture for decision as to whether a hearing aid should be authorized for the employment-related hearing loss in appellant's right ear.

In its denial of authorization for a hearing aid, the Office made no reference to Dr. Robertson's report recommending that appellant wear a hearing aid.¹⁹ It is well established that proceedings under the Act²⁰ are not adversarial in nature²¹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.²² The Office has an obligation to see that justice is done.²³ The unaddressed evidence of record reveals that appellant may require a hearing aid. While Dr. Robertson's medical report lacks sufficient medical rationale, it is sufficient to require further development of the medical evidence.²⁴

In light of the foregoing, the Board will remand the case to the Office for further development of the evidence. The Office shall then properly exercise its discretion and issue an appropriate decision on the issue of whether hearing aids should be authorized.

¹⁷ 5 U.S.C. § 8103(a).

¹⁸ *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).

¹⁹ The Office's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends. Trial or rental periods should be encouraged as many persons do not find their use satisfactory. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400(d)(2) (October 1995).

²⁰ 5 U.S.C. §§ 8101-8193.

²¹ *John J. Carlone*, 41 ECAB 354 (1989).

²² *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

²³ *William J. Cantrell*, 34 ECAB 1233 (1983).

²⁴ *Horace Langhorne*, 29 ECAB 820 (1978).

CONCLUSION

The Board finds that appellant has failed to establish that the hearing loss in his left ear was causally related to factors of his employment. The Board further finds that appellant has failed to establish that he sustained a ratable hearing loss in the right ear entitling him to a schedule award. Lastly, the Board finds that the case is not in posture for decision as to whether a hearing aid should be authorized for the employment-related hearing loss in appellant's right ear.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part and remanded to the Office for proceedings consistent with this decision. The Office's December 5, 2005 decision is affirmed.

Issued: August 1, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board