

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

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RICHARD PATRICK PERREIRA, Appellant )  
and ) Docket No. 05-939  
DEPARTMENT OF THE NAVY, PEARL ) Issued: July 12, 2006  
HARBOR NAVAL SHIPYARD, )  
Pearl Harbor, HI, Employer )  
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*Appearances:*

*David G. Jennings, Esq.*, for the appellant  
*Office of 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 March 15, 2005 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated February 7, 2005 which denied his claim for hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.<sup>1</sup>

**ISSUE**

The issue is whether the Office abused its discretion by refusing to authorize hearing aids.

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<sup>1</sup> The case record also contains a September 16, 2004 decision denying appellant's claim for a schedule award. Appellant's attorney has stated on appeal that he does not question the finding that the hearing loss was not large enough to warrant a schedule award. The Board will not review this decision on the present appeal.

### **FACTUAL HISTORY**

On September 16, 2003 appellant, then a 63-year-old retiree, filed a claim for compensation for an occupational disease of hearing loss that he attributed to his exposure to noise in his employment. He indicated that he became aware of his disease and its relationship to his employment on March 24, 1985. Appellant stated that he was exposed to noise from jackhammers and drills as a maintenance helper from 1962 to 1987 and to noise from washers and dryers as a washer from 1962 to 1967. He retired from the employing establishment on April 24, 1987.

The employing establishment submitted results of audiograms obtained there on January 24, 1984, January 3, 1985, March 20, April 1 and 8, 1986. The January 24, 1984 audiogram showed the following hearing thresholds at, respectively, 500, 1,000, 2,000 and 3,000 hertz: 5, 0, -5 and 45 for the right ear, and 5, 25, 15 and 25 for the left ear. The corresponding thresholds shown by the April 8, 1986 audiogram were 10, 15, 5 and 50 for the right ear, and 30, 15, 15 and 30 for the left ear. A January 25, 1984 note stated that appellant always uses earmuffs when needed, and a January 3, 1985 note stated that he used earplugs and muffs. A March 20, 1986 annual physical examination report lists constant noise as one of the environmental factors of appellant's employment as a maintenance helper. An April 8, 1982 report by an employing establishment physician noted that appellant had a sensorineural hearing loss and must wear ear protection in high noise areas.

The Office referred appellant and a statement of accepted facts to Dr. Meredith Pang, a Board-certified otolaryngologist, for an evaluation of his hearing loss and its relationship to his employment. In a July 15, 2004 report, accompanied by an audiogram made that day, Dr. Pang concluded that appellant had a 5.6 percent binaural hearing loss related to his hazardous noise exposure at work, and that some of his loss may be due to aging in the 17 years since he retired. An Office medical adviser reviewed the evidence on August 20, 2004 and, applying the Office's standards for evaluating the extent of hearing loss to the April 8, 1986 audiogram from the employing establishment, concluded that appellant did not have a ratable hearing loss. This medical adviser checked a block marked "no" in response to the question of whether a hearing aid was authorized.

On July 29, 2004 the Office advised appellant that it had accepted that he sustained bilateral hearing loss. By decision dated September 16, 2004, the Office found that appellant did not have a ratable hearing loss and was not entitled to a schedule award.

By letter dated September 24, 2004, appellant's attorney requested that appellant be granted medical benefits, including hearing aids. By decision dated February 7, 2005, the Office found that appellant had a zero percent binaural hearing loss and was not entitled to hearing aids.

### **LEGAL PRECEDENT**

Section 8103(a) of the Federal Employees' Compensation 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.<sup>2</sup> The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.<sup>3</sup>

### **ANALYSIS**

The Board finds that appellant is not entitled to hearing aids at the present time based on the evidence of record. Dr. Pang, the Board-certified otolaryngologist to whom the Office referred appellant to determine the extent and degree of any employment-related hearing loss, opined that appellant sustained an employment-related high frequency bilateral sensorineural hearing loss. However, she did not address the issue of hearing aids. After having reviewed Dr. Pang's report 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. There is no medical evidence of record recommending that appellant be provided with hearing aids or any other medical treatment for his employment-related hearing loss. Therefore, the Board finds that, under these circumstances, the Office acted within its discretion under section 8103(a) to deny authorization for hearing aids.

### **CONCLUSION**

The Office did not abuse its discretion by refusing to authorize hearing aids.

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> *Marjorie S. Geer*, 39 ECAB 1099 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 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