United States Department of Labor
Employees' Compensation Appeals Board

RODNEY L. JAMES, Appellant	)	
and	)	**Docket No. 06-794**
	)	**Issued: June 26, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Desoto, TX, Employer	)	

Appearances:
Rodney L. James, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 22, 2006 appellant filed a timely appeal from the April 26, 2005 and January 20, 2006 merit decisions of the Office of Workers' Compensation Programs, which denied an additional schedule award for tinnitus. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award issue.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for tinnitus.

FACTUAL HISTORY

On October 15, 2002 appellant, then a 53-year-old letter carrier, filed a claim alleging that the tinnitus in his ears was a result of his federal employment. He stated:

> "Started Dec[ember] 1998. It is permanent. No cure, no medicine will help. Some times I can cope o.k., but most times the (*noises*) drive me up the wall. The noises are there every second of the day. It doesn't even stop when I'm asleep. When I'm stressed or ill, that's when it really bothers me. Bad. Sometimes it is

> hard to go to sleep, I'll take Tylenol P.M. to help. There are times when I feel good, I can cope pretty good. But those times are few and far between. This disease is hard to explain. I have gone to some great doctors, they tell me to live with it. Not enough known about this disease. Look it up, unless you have 'tinnitus' then you will know. I have it in BOTH! ears. It has slowly gotten worse. If I wear ear plugs, outside noise can improve, but it makes the 'tinnitus' more noticeable."

On March 27, 2002 Dr. J.R. Williams, II, an assistant professor of general otolaryngology, reported that he was the third physician to see appellant about the noise in his ears. He described his findings on examination, including an ability to hear at conversational levels. Dr. Williams also reviewed medical records: "[Appellant] had multiple audiograms included in the bundle, which were serial and all showed a noise-induced type of high frequency pattern. Speech discrimination scores were normal." Dr. Williams' impression was symptomatic tinnitus. "However," he reported: "[appellant] feels it is not bothering him that much. It has not altered his ability to perform and masking noise was discussed." Dr. Williams assured appellant that there was nothing that could be done surgically to remove the problem and that he would probably have to live with it.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Donald N. Matheson, an otolaryngologist. On January 27, 2003 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing thresholds of 20, 15, 25 and 45 decibels in the right ear and 15, 10, 20 and 40 decibels in the left. Speech discrimination scores were 96 percent in both ears. Test results were determined to be valid and representative of appellant's hearing sensitivity. Dr. Matheson diagnosed noise-induced hearing loss (mild) and tinnitus (severe and subjective). He indicated that both conditions were due at least in part to noise exposure encountered in federal employment. Completing the Office's hearing evaluation form, Dr. Matheson indicated that appellant had an average hearing threshold of 26 decibels in the right ear and 21 decibels in the left, representing monaural impairments of 1.5 and 0 percent respectively. Noting, however, that appellant's complaint was for tinnitus rather than hearing loss, Dr. Matheson determined that appellant had a five percent binaural impairment because tinnitus impacted his ability to perform activities of daily living.

On February 13, 2003 the Office accepted appellant's claim for binaural tinnitus.

On February 19, 2003 an Office medical adviser reviewed Dr. Matheson's report. He determined that appellant's average hearing threshold was 26.25 decibels in the right ear and 21.25 decibels in the left, representing monaural impairments of 1.875 and 0 percent respectively.

On March 24, 2003 appellant filed a claim for a schedule award.

In a decision dated April 23, 2003, the Office issued a schedule award for a two percent monaural hearing loss in the right ear.

Appellant requested an oral hearing before an Office hearing representative, which was held on October 21, 2003. After the hearing, he submitted a November 17, 2003 audiogram

from the same audiologist, who obtained the audiogram for Dr. Matheson. This audiogram showed average hearing thresholds of 30 decibels in the right ear and 26.25 decibels in the left, higher than those obtained on January 27, 2003. Speech discrimination scores were 100 percent in both ears.

In a decision dated January 9, 2004, the hearing representative set aside the April 23, 2003 decision and remanded the case for another second opinion evaluation.

The Office again referred appellant to Dr. Matheson. On April 21, 2004 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing thresholds of 25, 35, 35 and 50 decibels in the right ear and 25, 35, 40 and 50 decibels in the left. Speech discrimination scores were 96 percent in both ears. Test results were determined to be valid and representative of appellant's hearing sensitivity. Dr. Matheson diagnosed mild sensorineural loss equal bilaterally and severe subjective tinnitus. He noted that appellant continued to use a fan motor at night for noise distraction: "He continues to be quite bothered by his daytime tinnitus. Other than reassurance I do not feel any more aggressive measures are indicated. His hearing continues to decrease slowly and a hearing aid in either ear may soon be justified." Completing the Office's hearing evaluation form, Dr. Matheson indicated that appellant had an average hearing threshold of 36.3 decibels in the right ear and 37.5 decibels in the left, representing monaural impairments of 17 and 19 percent respectively. He reported that this represented a binaural impairment of 16 percent, to which he added 5 percent because tinnitus impacted appellant's ability to perform activities of daily living.

On May 13, 2004 an Office medical adviser reviewed Dr. Matheson's findings.[1] He calculated that appellant had a 16.875 percent hearing loss in the right ear and an 18.75 percent loss in the left, which represented a binaural hearing loss of 17 percent. Accounting for the monaural impairment previously paid for the right ear, the Office medical adviser determined that appellant was due an award for an additional 16 percent binaural hearing loss.

In a decision dated May 18, 2004, the Office issued a schedule award for a 16 percent binaural hearing loss.

Appellant requested a review of the written record:

> "Would you *please* explain to me why the [Office medical adviser] didn't give me the extra 5 percent for tinnitus, which I feel very strongly about. The doctor you sent me to, Dr. Matheson, M.D., date April 21, 2004, was asked 'If tinnitus impacts the ability to perform activities of daily living.' You asked him that and he believed it does. My claim has always been for loss of hearing and tinnitus." (Emphasis in the original.)

[1] The Office medical adviser reported that the audiometry of April 21, 2004 was used to determine appellant's hearing loss because it was the most recent, met the Office's standards and was an integral part of Dr. Matheson's most recent evaluation.

In a decision dated January 18, 2005, an Office hearing representative set aside the May 18, 2004 schedule award and remanded the case for an opinion by the Office medical adviser on whether appellant was entitled to additional compensation for tinnitus.

On March 25, 2005 the Office medical adviser noted that tinnitus could be considered if it impacted that ability to perform activities of daily living. He reported: "In my opinion there is inadequate evidence in the record to conclude that the claimant's ability to perform activities of daily living has been adversely affected."

In a decision dated April 26, 2005, the Office denied an additional schedule award for tinnitus. Appellant again requested a review of the written record.

In a decision dated January 20, 2006, an Office hearing representative affirmed the April 26, 2005 denial of additional compensation for tinnitus. She found that the medical evidence did not demonstrate that appellant's tinnitus affected his activities of daily living.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss of use of specified members, organs or functions of the body, including hearing.[2] Such loss of use is known as permanent impairment.

The Office evaluates the degree of hearing loss according to the standards set forth in the specified fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] The Board has concurred in the Office's adoption of this standard.[4]

The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."[5] The A.M.A., *Guides* explains that sleep or a restful nocturnal sleep pattern, is a commonly measured activity of daily living and that physicians should consider such activity when establishing a permanent impairment rating: "A physician can often assess a person's ability to perform [activities of daily living] based on knowledge of

[2] 5 U.S.C. § 8107(c)(13) (which provides 52 weeks' compensation for complete loss of hearing in one ear and 200 weeks' compensation for complete loss of hearing in both ears); *see id*. § 8107(c)(19) (compensation for partial loss is proportionate).

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

[4] *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted*, Docket No. 01-1570 (issued August 13, 2002) (modifying prior decision).

[5] A.M.A., *Guides* 246 (5th ed. 2001).

the patient's medical condition and clinical judgment."[6] The A.M.A., *Guides* further advises as follows:

> "Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment."[7]

ANALYSIS

The Board finds that the evidence in this case is sufficient to establish that tinnitus impacts appellant's ability to perform activities of daily living. When he filed his claim for compensation in 2002, appellant explained that sometimes he coped okay, but most times the tinnitus impacted his ability to sleep. He stated that he would take Tylenol PM to help him get to sleep sometimes. Dr. Williams earlier reported that appellant felt his symptomatic tinnitus was not bothering him that much and that he had not "altered his ability to perform." In 2003, however, Dr. Matheson, the Office's referral physician, diagnosed severe subjective tinnitus. He found a measurable hearing loss in the right ear and, noting that appellant's complaint was for tinnitus rather than hearing loss, determined that appellant had a five percent binaural impairment because tinnitus impacted his ability to perform activities of daily living. When Dr. Matheson reevaluated appellant in 2004, he noted that appellant continued to use a fan motor at night for noise distraction and continued to be quite bothered by his daytime tinnitus. Dr. Matheson again added five percent to the estimate for measurable binaural impairment because tinnitus impacted appellant's ability to perform activities of daily living.

It is for the evaluating physician to integrate appellant's subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. Dr. Matheson had appellant's medical record before him, including Dr. Williams' 2002 report. He had a statement of accepted facts and appellant's history, including continued use of a fan motor as noise distraction at night. Dr. Matheson therefore had sufficient grounds for determining that tinnitus currently impacted appellant's ability to sleep, a commonly measured activity of daily living. As he was the evaluating physician, the Board finds that his clinical judgment on the additional impairment due to tinnitus outweighs the opinion of the Office medical adviser and constitutes the weight of the medical evidence.

The Board will reverse the Office's April 26, 2005 and January 20, 2006 decisions and will remand the case for an additional schedule award of five percent due to tinnitus.

[6] *Id*. at 5.

[7] *Id*. at 246.

CONCLUSION

The Board finds that appellant is entitled to an additional schedule award. The weight of the medical evidence establishes that appellant has an additional binaural hearing impairment of five percent due to the impact of tinnitus on his ability to perform activities of daily living.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2006 and April 26, 2005 decisions of the Office of Workers' Compensation Programs are reversed. The case is remanded for further action consistent with this opinion.

Issued: June 26, 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