

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

S.C., Appellant)

and)

**DEPARTMENT OF THE NAVY, NAVAL AIR
WARFARE CENTER, Point Mugu, CA,
Employer**)

**Docket No. 06-1441
Issued: September 13, 2006**

Appearances:
S.C., pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 2, 2006 appellant filed a timely appeal from a March 1, 2006 decision of an Office of Workers' Compensation Programs' hearing representative affirming the May 3, 2005 Office decision, denying appellant's claim for hearing loss. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

Appellant, a 55-year-old engineering technician, filed a claim for benefits on January 20, 2005, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. He stated that he first became aware he had sustained a hearing loss causally related to his employment on January 13, 1992. Appellant retired from the employing establishment on January 3, 2005.

By letter dated January 24, 2005, the Office asked appellant for additional information pertaining to his alleged employment-related exposure to loud noise. In a statement dated January 12, 2005, appellant asserted that he had been exposed to loud noise from jet engines and shipyard repair activities since 1967.

On March 1, 2005 the Office referred appellant and a statement of accepted facts to Dr. Arthur Peters, a Board-certified otolaryngologist, for an audiologic and otologic evaluation. The audiologist performing the March 15, 2005 audiogram for Dr. Peters noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 15, 20, 15 and 45 decibels: left ear -- 15, 15, 20 and 30 decibels. Dr. Peters indicated that appellant's hearing loss was due to employment factors and concluded that appellant had sustained ratable hearing loss attributable to noise exposure at his federal employment.¹

In a memorandum dated April 27, 2005, an Office medical adviser found on the basis of Dr. Peters' March 15, 2005 audiogram results and calculations that appellant had a zero percent binaural hearing loss.

In a decision dated May 3, 2005, the Office found that appellant had not sustained a ratable hearing loss causally related to factors of his federal employment.

On May 16, 2005 appellant requested an oral hearing, which was held on December 15, 2005.

By decision dated March 1, 2006, an Office hearing representative affirmed the May 3, 2005 Office decision.

LEGAL PRECEDENT

The schedule award provision 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 hertz, 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

¹ Dr. Peters did not recommend hearing aids.

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 March 15, 2005 audiogram obtained by Dr. Peters, a Board-certified otolaryngologist. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed hearing losses in the right ear of 15, 20, 15 and 45 respectively. These totaled to 95 decibels which, when divided by 4, obtains an average hearing loss of 23.75 decibels. The average of 23.75 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 hertz revealed decibel losses of 15, 15, 20 and 30 respectively. These totaled 80, which, when divided by 4, obtains an average hearing loss of 20 decibels. The average of 20 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 have a ratable hearing loss causally related to factors of his 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 Office therefore properly found in its May 3, 2005 decision that appellant did not sustain a ratable hearing loss causally related to factors of his federal employment.

Following the May 3, 2005 decision, appellant requested an oral hearing but did not submit any additional medical evidence. The Board therefore affirms the March 1, 2006 decision of the Office hearing representative, which affirmed the May 3, 2005 decision denying appellant a schedule award for an employment-related hearing loss.²

CONCLUSION

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

² The hearing representative noted that Dr. Peters did not recommend hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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