

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

D.L., Appellant

and

DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer

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**Docket No. 07-278
Issued: April 25, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated March 30 and August 3, 2006. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has a ratable hearing loss causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

FACTUAL HISTORY

Appellant, a 52-year-old aircraft engine lead repairman/trainer, filed a claim for benefits on November 2, 2005 alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. He first became aware that he had sustained a hearing loss causally related to his employment on October 1, 2005.

By letter dated November 23, 2005, the Office asked appellant for additional information pertaining to his employment-related exposure to loud noise. In statements dated November 2, 2005, appellant asserted that he had been exposed to loud noise from aircraft engines and sheet metal shop activities since 1977.

On January 24, 2006 the Office referred appellant and a statement of accepted facts to Dr. Richard B. Dawson, a Board-certified otolaryngologist, for an audiologic and otologic evaluation. The audiologist performing the February 20, 2006 audiogram for Dr. Dawson noted findings on audiological testing. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear 15, 15, 20 and 30 decibels; and left ear 15, 15, 20 and 25 decibels. Dr. Dawson indicated that appellant's hearing loss was due to employment factors and concluded that appellant had sustained a hearing loss attributable to noise exposure at his federal employment.¹

In a memorandum dated March 28, 2006, an Office medical adviser reviewed the report of Dr. Dawson and audiometric results. He determined that the extent of hearing loss was not ratable under the Office's standards.

In a decision dated March 30, 2006, the Office found that appellant had not sustained a ratable hearing loss causally related to factors of his federal employment.

By letter dated July 14, 2006, appellant requested an oral hearing.

By decision dated August 3, 2006, the Office denied appellant's request for an oral hearing. The Office found that appellant's request was postmarked July 14, 2006, which was more than 30 days after issuance of the March 30, 2006 decision and that he was not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act² 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. However, the Act does not specify the manner in which the percentage of loss of use 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.

¹ Dr. Dawson did not recommend hearing aids.

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

The Office evaluates permanent hearing loss in accordance with standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). Using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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 -- ISSUE 1

An Office medical adviser applied the Office’s standardized procedures to the March 15, 2005 audiogram obtained by Dr. Dawson, a Board-certified otolaryngologist.³ According to the Office’s standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 15, 15, 20 and 30 respectively. These totaled to 80 decibels which, when divided by 4, obtains an average hearing loss of 20 decibels. The average of 20 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 Hz revealed decibel losses of 15, 15, 20 and 25 respectively. These totaled 75, which, when divided by 4, obtains an average hearing loss of 18.75 decibels. The average of 18.75 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 properly 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 properly found in its March 30, 2006 decision that appellant did not sustain a ratable hearing loss causally related to factors of his federal employment.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.⁴ A claimant is not entitled to a hearing if the request is not made within 30 days of the

³ The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

⁴ 5 U.S.C. § 8124(b)(1).

date of issuance of the decision as determined by the postmark of the request.⁵ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷

ANALYSIS -- ISSUE 2

Appellant's July 14, 2006 request for a hearing was postmarked more than 30 days after the Office's March 30, 2006 decision denying a schedule award for his accepted binaural hearing loss. He is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing. The Board will affirm the Office's August 3, 2006 decision denying appellant an oral hearing before an Office hearing representative.

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing loss causally related to factors of his federal employment. The Board finds that the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

⁵ 20 C.F.R. § 10.131(a)(b).

⁶ *William E. Seare*, 47 ECAB 663 (1996).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 3 and March 30, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: April 25, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board