United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
	)	**Docket No. 07-355**
and	)	**Issued: April 18, 2007**
	)	
DEPARTMENT OF LABOR, OFFICE OF THE INSPECTOR GENERAL, Washington, DC, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 21, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 16, 2006 denying his claim for a schedule award for an employment-related loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On September 27, 2005 appellant, then a 56-year-old criminal investigator, filed an occupational disease claim alleging that he sustained hearing loss due to factors of his employment. He alleged that he was aware of high frequency hearing loss during his former

federal employment as an official agent,[1] but in July 2005 he did not pass the hearing test. By letter dated November 16, 2005, the Office informed appellant that the information was not sufficient to support his claim. The Office requested additional factual and medical evidence necessary to adjudicate his claim. In response, appellant submitted a statement dated November 21, 2005 wherein he noted that during his federal employment he was routinely exposed to simulative explosives and weapons range firing in training scenarios. He also noted that he was required to maintain strategic security positions in airports arrivals and departures where he was in close proximity of protectees on runways and tarmacs all over the world. In further support, appellant submitted records from his prior employment with the Secret Service.

By letter dated January 12, 2006, the Office referred appellant to Dr. John Ruth, Jr., a Board-certified otolaryngologist, for an evaluation to determine whether he had an employment-related hearing loss. Dr. Ruth reviewed an audiogram dated January 27, 2006. The audiogram reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 10, 10, 10 and 40 and on the right of 25, 25, 10 and 25 respectively. Dr. Ruth opined that appellant was "presently not a good candidate for amplification.

On February 15, 2006 the Office medical adviser concluded that appellant did not have a ratable hearing loss. He also noted that Dr. Ruth specifically did not recommend a hearing aid.

By decision dated March 16, 2006, the Office accepted appellant's claim for a hearing loss due to noise exposure but determined that he did not have a ratable impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[4] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at

[1] Appellant worked for the U.S. Secret Service from 1975 to 1999. From September 1999 to October 2001, appellant worked for a private corporation and starting October 16, 2001 he was employed with the current employing establishment.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See* 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[4] A.M.A., *Guides* 250.

each frequency are added up and averaged.[5] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[6] 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.[7] The Board has concurred in the Office's adoption of this standard for evaluating hearing losses.[8]

ANALYSIS

In the present case, the Office medical adviser reviewed otologic and audiologic testing performed by Dr. Ruth, the Board-certified otolaryngologist to whom the Office referred appellant for a current evaluation and correctly applied the Office's standardized procedures to the November 27, 2006 audiogram. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 10 and 40 respectively. These decibel losses were totaled at 70 and divided by 4 to obtain the average hearing loss per cycle of 17.5. The average of 17.5 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal -7.5 percent hearing loss for the right ear, which when multiplied by 1.5, resulted in a zero ratable loss in the right ear. Testing on the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 25, 10 and 25, respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss per cycle of 21.25. The average of 21.25 was then reduced by the 25 decibel fence to equal -2.75 which was multiplied by 1.5 to result in a zero ratable loss in the left ear. The Office medical adviser properly found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides.*

The Board finds that the Office medical adviser properly applied the Office's standards to the November 27, 2006 audiogram. The result is a nonratable hearing loss bilaterally.[9] The Office medical adviser properly relied on the November 27, 2006 audiogram as it was part of Dr. Ruth's evaluation and met all the standards.[10]

The Office accepted that appellant has an employment-related hearing loss. He would be entitled to medical benefits related to his hearing loss, including hearing aids, if medically necessary. However both Dr. Ruth and the Office medical adviser have concluded that appellant does not require hearing aids.

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

[9] To determine the binaural hearing loss, the lesser loss is multiplied by five and added to the greater loss and divided by six. Appellant had a zero percent binaural hearing loss.

[10] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing, thus he is not entitled to an award.[11]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 16, 2006 is affirmed.

Issued: April 18, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[11] Appellant submitted new evidence on appeal. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).