United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
	)	**Docket No. 07-886**
and	)	**Issued: August 10, 2007**
	)	
DEPARTMENT OF THE ARMY, HUNTER ARMY AIRFIELD FIRE DEPARTMENT, Fort Stewart, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 February 12, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 24, 2006, which denied modification of a June 7, 2006 schedule award for a two percent binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a two percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On April 26, 2005 appellant, then a 54-year-old lead fire fighter, filed a claim for compensation benefits alleging that he developed hearing loss due to his federal employment. He became aware of his hearing loss on July 10, 2003. Appellant stopped working as a fire

fighter on April 12, 2004 and was thereafter employed as a part-time recreation assistant at the employing establishment where he was not exposed to hazardous noise.

By letter dated May 4, 2005, the Office advised appellant of the evidence needed to establish his claim. The Office also requested the employing establishment to address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

On May 10, 2005 appellant advised that he experienced significant hearing loss as a lead fire fighter from 1986 to 2004 where he was exposed to hazardous noise from fire apparatus. He submitted employing establishment audiograms taken from June 29, 1987 to September 11, 2001. The audiograms revealed sensorineural hearing loss.

In a statement of accepted facts dated August 10, 2005, the Office noted that from 1996 to 2004 appellant worked as a lead fire fighter and was exposed to noise within the fire service. The fire service was responsible for driving three crash trucks from 1996 to 1997, which encompassed pulling them out of the station, starting and checking them on a daily basis. Appellant was provided with earmuffs and earplugs; however, during emergencies hearing protection was not used. He was also exposed to engine noise, sirens, air horns, aircraft noise and alarm systems. Appellant is currently employed as a part-time recreation assistant and is not exposed to loud noise.

By letter dated August 10, 2005, the Office referred appellant and the statement of accepted facts to Dr. Thomas M. Crews, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Crews performed an otologic evaluation of appellant on September 12, 2005 and audiometric testing was conducted on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 30, 25, 25 and 25 decibels; left ear 30, 25, 25 and 25 decibels. Dr. Crews determined that appellant sustained mild sensorineural hearing loss in both ears. He recommended a trial of amplification in both ears.

By decision dated November 21, 2005, the Office accepted that appellant sustained mild bilateral sensorineural hearing loss due to workplace exposure to noise. On November 8, 2005 appellant filed a claim for a schedule award.

On February 13, 2006 an Office medical adviser reviewed Dr. Crews' report and the audiometric test of September 12, 2005. The medical adviser concluded that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*), appellant had a two percent binaural sensorineural hearing loss. He noted that the date of maximum medical improvement was September 12, 2005, the date of the audiogram performed for Dr. Crews. The medical adviser also recommended authorizing hearing aids.

In a decision dated June 7, 2006, the Office granted appellant a schedule award for a two percent binaural hearing loss. The period of the award was from September 12 to October 9, 2005.

On September 27, 2006 appellant requested reconsideration and submitted additional evidence. In an audiogram dated July 10, 2006, Ronald Gooden, an audiologist, noted bilateral tinnitus, bilateral moderate sensorineural hearing loss and recommended hearing aids. The audiogram was not signed by a physician. In a letter dated July 14, 2006, Mr. Gooden noted audiological testing revealed moderate sensorineural hearing loss bilaterally, speech response thresholds were 40 decibels bilaterally and speech discrimination was 96 percent for the right ear and 92 percent for the left ear. He recommended binaural hearing aids. In correspondence dated September 20, 2006, Mr. Gooden advised that the audiogram performed on July 10, 2006 revealed moderate sensorineural hearing loss bilaterally and noted that "using the Workers' Compensation formula, you exhibit a 17.37 percent loss of hearing" without including tinnitus.

On November 8, 2006 an Office medical adviser reviewed the July 10, 2006 audiogram and the accompanying report of Mr. Gooden. The medical adviser noted that the audiogram of July 10, 2006 was suspect because it showed a much higher hearing threshold, although the profile was atypical for noise-induced hearing loss, and there was a dramatic increase in hearing loss in a 10-month period. He noted that the increase could not be attributed to employing establishment exposure as noise-induced hearing loss did not generally worsen after exposure stopped and appellant was removed from the noise exposure in April 2004.

By decision dated November 24, 2006, the Office denied modification of the June 7, 2006 schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[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 each frequency are added up and averaged.[5] Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Id. See also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[4] A.M.A., *Guides* at 250 (5th ed. 2001).

[5] *Id.*

the ability to hear everyday speech under everyday conditions.[6] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[7] 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.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

ANALYSIS

An Office medical adviser applied the Office's standardized procedures to the September 12, 2005 audiogram performed for Dr. Crews. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 30, 25, 25 and 25 respectively. These decibels were totaled at 105 and were divided by 4 to obtain an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.875 percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels losses of 30, 25, 25 and 25 respectively. These decibels were totaled at 105 and were divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.875 percent hearing monaural loss for the left ear. The lesser loss of 1.875 is multiplied by 5, then added to the greater loss of 1.875 and the total is divided by 6 to arrive at the amount of the binaural hearing loss of 2 percent.

Appellant submitted an audiogram dated July 10, 2006 performed by Mr. Gooden, an audiologist, who noted audiological testing revealed moderate sensorineural hearing loss bilaterally, speech response thresholds were 40 decibels bilaterally and speech discrimination was 96 percent for the right ear and 92 percent for the left ear. In correspondence dated September 20, 2006, Mr. Gooden advised that the audiogram performed on July 10, 2006 revealed moderate sensorineural hearing loss bilaterally and noted that appellant sustained a hearing loss of 17.37 percent. However, the July 10, 2006 audiogram was not certified by a physician.[10] An Office medical adviser opined that the validity of the July 10, 2006 audiogram was suspect because it revealed a much higher hearing threshold which was atypical for noise-induced hearing loss and showed a dramatic increase in hearing loss in a 10-month period. He noted that the increase should not be attributed to employing establishment exposure as

[6] *Id.*

[7] *Id.*

[8] *Id.*

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

[10] *See Joshua A. Holmes,* 42 ECAB 231 (1990).

noise-induced hearing loss does not generally worsen after exposure stops and that appellant was removed from the accepted noise exposure in April 2004.

The Board finds that the Office medical adviser applied the proper standards to the September 12, 2005 audiogram. Under the Office's standardized procedures, there is no basis on which to grant more than a two percent schedule award for binaural hearing loss.

CONCLUSION

The Board finds that the Office properly determined that appellant sustained a two percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the November 24 and June 7, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 10, 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