United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 07-942**
	)	**Issued: August 3, 2007**
DEPARTMENT OF THE AIR FORCE, TRAVIS AIR FORCE BASE, CA, 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 February 21, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 23, 2007, which found that her employment-related hearing loss was not ratable for schedule award purposes. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award for his employment-related hearing loss.

FACTUAL HISTORY

On September 20, 2006 appellant, then a 58-year-old aircraft overhaul supervisor, filed an occupational disease claim, alleging that noise exposure during his federal employment caused hearing loss. By letters dated September 25, 2006, the Office requested that the employing establishment furnish information regarding appellant's noise exposure and informed him of the type of evidence needed to support his claim. Appellant submitted a response

describing his employment history and noise exposure. The employing establishment submitted appellant's job description, noise exposure information and health records including a number of audiograms dating from November 18, 1969 to August 22, 2006.

By letter dated October 24, 2006, the Office referred appellant to Dr. Ernest E. Johnson, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram. Dr. Johnson submitted a report dated November 27, 2006 describing his examination. He diagnosed bilateral mild high frequency sensorineural hearing loss and intermittent tinnitus and opined that the condition was due in part to employment-related noise exposure. Dr. Johnson submitted calibration certification and results of audiometric testing performed by a certified audiologist. The audiogram, performed on November 27, 2006, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear 15, 15, 20 and 20 decibels; left ear 10, 15, 15 and 20 decibels, respectively.

Following referral by the Office, in a report dated January 15, 2007, an Office medical consultant, Dr. David N. Schindler, a Board-certified otolaryngologist, advised that appellant's binaural hearing loss was aggravated by employment-related noise exposure and that it was not ratable for schedule award purposes. In reaching this determination, Dr. Schindler utilized the November 27, 2006 audiogram and determined that maximum medical improvement had been reached on that date. On January 19, 2007 the Office accepted that appellant sustained employment-related noise-induced hearing loss.

In a decision dated January 23, 2007, the Office found that appellant had no compensable impairment secondary to his employment-related hearing loss as it was not ratable for schedule award purposes.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.[2] The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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.[3] The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter 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 and averaged.[5] The "fence" of 25 decibels is then

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id.* at § 8107(c).

[3] *Renee M. Straubinger*, 51 ECAB 667 (2000).

[4] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[5] *Id.* at 250.

deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in 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

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss because the November 27, 2006 audiogram results did not demonstrate ratable values.

The November 27, 2006 audiogram, the only study that complied with Office certification procedures,[10] demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 15, 15, 20 and 20 decibels on the right for a total of 70 decibels. This figure, when divided by 4, results in an average hearing loss of 17.5 decibels. The average of 17.5 decibels, when reduced by 25 decibels, results in a 0 percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 15 and 20, for a total of 60 decibels. This figure, when divided by 4, results in an average hearing loss of 15 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear. The Board thus finds that, as the

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Horace L. Fuller*, 53 ECAB 775 (2002).

[10] Office procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8(a) (September 1995); *see Vernon Brown*, 54 ECAB 376 (2003). The Board further notes that the August 23, 2006 employing establishment audiogram demonstrated values at frequencies levels of 500, 1,000, 2,000 and 3,000 cps of 20, 10, 15 and 15 on the right and 15, 10, 5 and 20 on the left. As explained in this decision, these values would not be ratable. Furthermore, the studies performed between 1969 and 2000 also do not demonstrate a ratable impairment. The Board, therefore, finds that these studies do not establish that appellant is entitled to a schedule award.

November 27, 2006 audiogram did not demonstrate that appellant's hearing loss was ratable, he was not entitled to a schedule award for his accepted hearing loss condition.[11]

Finally, the Board notes that, while the A.M.A., *Guides*, provides that tinnitus, in the presence of a unilateral or bilateral hearing impairment, may impair speech discrimination and provide for up to a five percent rating for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform activities of daily living.[12] However, as appellant's hearing loss is not ratable, he would not be entitled to the additional award for tinnitus.[13]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2007 be affirmed.

Issued: August 3, 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] The Board, however, has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he or she may apply for a schedule award for any ratable impairment. *See Robert E. Cullison*, 55 ECAB 570 (2004).

[12] A.M.A., *Guides*, *supra* note 4 at 246.

[13] *See Juan A. Trevino*, 54 ECAB 358 (2003).