

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

_____)
G.B., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, ROBINS)
AIR FORCE BASE, GA, Employer)
_____)

**Docket No. 07-2408
Issued: April 7, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2007 appellant filed a timely appeal from a June 29, 2007 merit decision of the Office of Workers' Compensation Programs that denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he had a ratable hearing loss entitling him to a schedule award and hearing aids.

FACTUAL HISTORY

On August 17, 2006 appellant, then a 56-year-old aerospace engineering technician, filed an occupational disease claim stating that he developed mild to moderate high frequency binaural hearing loss in the performance of duty. He advised that he retired in June 2006 and his last noise exposure was on July 15, 1986. Appellant explained that his hearing loss was diagnosed from audiometric testing data collected during his retirement "out processing." He

and the employing establishment submitted personnel information and audiometric testing results which established that appellant was employed as an aircraft mechanic from 1978 to 1986 and as an aerospace engineering technician from 1986 to 2006 and was exposed to noise from various sources between 1978 and 1986.

On April 16, 2007 the Office referred appellant, along with a statement of accepted facts, to Dr. Sean B. Peppard, an otolaryngologist, for a second opinion examination to determine whether appellant had residual hearing loss due to noise exposure during his federal civilian employment.

In an April 25, 2007 form report, Dr. Peppard noted that a recent hearing examination, conducted in December 2005, showed that appellant had mild to moderate high frequency hearing loss. He advised that audiometric testing conducted in 1978, when appellant's noise exposure began, was normal. Dr. Peppard concluded that appellant's mild to moderate high frequency hearing loss was beyond what might normally be observed in an individual of appellant's age. He concluded that the noise to which appellant was exposed while on the job was sufficient to cause his hearing loss. Dr. Peppard diagnosed high frequency sensorineural hearing loss and opined that the hearing loss was caused by noise exposure during appellant's federal civilian employment. He recommended a hearing aid fitting. An April 25, 2007 audiogram conducted on Dr. Peppard's behalf showed appellant's decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The audiogram reflected the following decibel losses: 10, 5, 10 and 15 for the right ear and 10, 5, 15 and 20 for the left ear.

On April 30, 2007 the Office accepted appellant's claim for binaural hearing loss due to noise.

On June 21, 2007 appellant claimed a schedule award.

In a June 29, 2007 memorandum, the Office medical adviser reviewed Dr. Peppard's otologic examination report. He applied the audiometric calibrations to the hearing loss computation methods outlined within the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition (A.M.A., *Guides*) and determined that appellant had zero percent monaural hearing loss in the right ear and zero percent monaural hearing loss in the left ear. The medical adviser concluded that appellant had zero percent binaural hearing loss and no ratable impairment. He checked a box indicating that hearing aids were not authorized.

By decision dated June 29, 2007, the Office denied appellant's request for a schedule award on the grounds that the medical evidence reflected no ratable hearing impairment. The Office found that the weight of the medical evidence did not support that appellant would benefit from hearing aids and denied additional medical benefits.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 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 Office medical adviser applied the Office's standard procedures, detailed above, to the April 25, 2007 audiogram performed on Dr. Peppard's behalf. Appellant's April 25, 2007 audiogram tested decibel losses at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 10, 5, 10 and 15 respectively for the right ear. The total decibel loss in the right ear is 40 decibels. When divided by 4, the result is an average hearing loss of 10 decibels. The average loss of 10 decibels is reduced by the "fence" of 25 decibels to equal zero which when multiplied by the established factor of 1.5, resulted in zero percent impairment for the right ear.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2002).

³ *Id.*

⁴ A.M.A. *Guides* 250 (5th ed. 2001).

⁵ *Id.*

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).

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 15 and 20 decibels respectively, for a total decibel loss of 50 decibels. When divided by four, the result is an average hearing loss of 12.5 decibels. The average loss of 12.5 decibels is reduced by the “fence” of 25 decibels to equal zero which when multiplied by the established factor of 1.5, resulted in zero percent impairment for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Peppard’s April 25, 2007 report and audiogram. The result is that appellant does not have a ratable hearing loss for schedule award purposes.

On appeal, appellant disputed the Office’s denial of his request for hearing aids. The Office’s procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends.¹⁰ The Board notes that the second opinion physician, Dr. Peppard, recommended that appellant be fitted for hearing aids. However, the Office medical adviser indicated that hearing aids should not be authorized. The medical adviser offered no explanation of his disagreement with the second opinion physician and no reasoning in support of his conclusion that hearing aids should not be authorized and the Office’s decision denying hearing aids also provided no further reasoning. The Board finds that the record is unclear on the issue of whether hearing aids should be authorized.

The Board notes that proceedings under the Act are not adversarial in nature. The Office shares in the responsibility to develop the evidence and has an obligation to see that justice is done.¹¹ Accordingly, the Board finds that the case must be remanded to the Office for further medical development on the question of whether appellant is entitled to hearing aids. Following this and such other development as is deemed necessary, the Office shall issue an appropriate merit decision regarding hearing aids should be authorized.

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes. The Board further finds that the case must be remanded to the Office for further development on the question of whether hearing aids should be authorized.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1995).

¹¹ *Lyle Dayberry*, 49 ECAB 369, 372 (1998).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed in part and the case is set aside and remanded in part.

Issued: April 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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