

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

D.A., Appellant)	
)	
and)	Docket No. 08-1395
)	Issued: December 3, 2008
DEPARTMENT OF THE ARMY, U.S. ARMY)	
MATERIAL COMMAND, Corpus Christi, TX,)	
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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2008 appellant timely appealed the March 20, 2008 merit decision of the Office of Workers' Compensation Programs denying a schedule award for employment-related hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

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

FACTUAL HISTORY

On September 19, 2007 appellant, then a 51-year-old sheet metal mechanic leader, filed an occupational disease claim alleging that he sustained hearing loss due to factors of his employment. He submitted information pertaining to his employment history as well as copies of his health record from the employing establishment, which contained audiograms from 1989

to 2007. Appellant was noted to be enrolled in the Hearing Conservation Program and exposed to noise from rivet guns and high speed grinders. An August 24, 2007 audiological evaluation at the Brooke Army Medical Center revealed that he had bilateral sensorineural hearing loss.

On January 29, 2008 the Office scheduled appellant for an audiologic and otologic evaluation with Dr. Paul W. Loeffler, Board-certified in otolaryngology. An audiogram was completed on February 19, 2008, which 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 25, 20, 25 and 30, respectively and on the right of 25, 25, 25 and 25. Dr. Loeffler diagnosed tinnitus with bilateral neurosensory hearing loss. He opined that the hearing loss was due to appellant's exposure to high noise levels encountered in his federal employment. Dr. Loeffler advised that appellant was to have annual audiograms and should wear hearing protection all the time both at home and at work.

On March 6, 2008 an Office medical adviser reviewed the February 19, 2008 audiogram results and used them to calculate appellant's impairment rating finding that he had a zero percent impairment and therefore did not have a ratable hearing loss. The Office medical adviser additionally did not recommend hearing aids.

By decision dated March 20, 2008, the Office accepted appellant's claim for binaural noise-induced hearing loss but found that appellant was not entitled to a schedule award. It found that the February 19, 2008 audiogram provided by Dr. Loeffler and verified by the Office medical adviser did not result in a ratable hearing loss in either ear. The Office also denied additional medical benefits as the medical evidence did not support that appellant would benefit from hearing aids at the present.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulation have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

¹ The Act provides that for complete, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks compensation. 5 U.S.C. § 8107(c)(13) (2000).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁴ 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.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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

The Office medical adviser applied the Office's standard procedures, detailed above, to the February 19, 2008 audiogram performed on Dr. Loeffler's behalf. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 20, 25 and 30, respectively. These decibel losses were totaled at 100 and divided by 4 to obtain the average hearing loss per cycle of 25. The average of 25 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the left ear. The 0 was multiplied by the 1.5 resulting in a 0 percent loss for the left ear. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 25, 25 and 25, respectively. These decibel losses were totaled at 100 and divided by 4 to obtain the average hearing loss per cycle of 25. The average of 25 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right 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 applied the proper standards to the February 19, 2008 audiogram. The result is a nonratable hearing loss.

The medical evidence of record further supports that appellant is not entitled to any additional medical benefits at this time. 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.⁹ In his February 19, 2008 report, Dr. Loeffler

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

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1995).

recommended that appellant have annual audiograms. He did not recommend hearing aids. The Office medical adviser also did not recommend hearing aids. Thus, the Board finds that the Office properly declined to authorize hearing aids. On appeal, appellant argued that his hearing loss will probably worsen in the future. The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment.¹⁰

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award. Furthermore, the medical record supports appellant is not entitled to any additional medical benefits at this time.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994).