United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 07-2077**
	)	**Issued: February 14, 2008**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, Employer	)	

Appearances:
David Jennings, Esq., for the appellant
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 August 6, 2007 appellant, through her attorney, filed a timely appeal from the January 18, 2007 decision of the Office of Workers' Compensation Programs denying him a schedule award for his hearing loss. 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 established that he is entitled to a schedule award for his employment-related hearing loss.

FACTUAL HISTORY

On May 2, 2006 appellant, then a 58-year-old electrician, filed an occupational disease claim alleging that his hearing loss was caused by his federal employment.

On May 24, 2006 the Office requested additional information about appellant's claim. In an undated letter, he stated that he had been a federal employee from 1996 to the present, during which time he was exposed to various pneumatic tools, chipping, grinding and other industrial

noises for eight hours per day. Appellant stated that he was provided with and used earplugs at work. On February 3, 2006 Alicia Peterson, an audiologist, stated that his pure tone screening indicated bilateral severe-profound high frequency hearing loss. She stated that the configuration of the audiogram was consistent with a history of noise exposure.

On May 30, 2006 the employing establishment controverted appellant's claim, stating that he had not established that his hearing loss was related to his federal employment. It noted that he began his employment on June 23, 1998 and that he had noise exposure at previous jobs and in the military since 1966. The employing establishment and appellant's supervisor agreed that appellant was exposed to various pneumatic tools, chipping, grinding and other industrial noises for 40 hours per week.

On July 17, 2006 the employing establishment submitted medical documentation related to appellant's annual hearing tests. On June 26, 2006 S.E. Lewis, an occupational audiologist from the employing establishment clinic, reviewed appellant's employment-related medical records and stated that he had a preexisting bilateral hearing loss when he started with the employing establishment and that it had not significantly changed. He noted that appellant indicated that hearing loss was a problem on his entry physical examination papers, dated June 12, 1998. Mr. Lewis stated that, beginning in 2001, appellant was restricted from working in areas with noise greater than 85 decibels. In 2005, the work restriction was updated to include no roaming work, no dry-dock work and no shipboard work. Appellant's only personal noise survey on file, conducted on May 9, 2000, showed an average exposure of 69.8 decibels. The noise surveyor, Cheryl Lemmon, noted that the day of testing was not typical and that there was much less noise than she had previously observed because so many people were absent from work. On July 10, 2006 Dr. G.V. Blackwood, a senior medical officer at the employing establishment's clinic, stated that he reviewed Mr. Lewis' findings and agreed with them. He found that appellant had preexisting bilateral hearing loss and opined that, given the short time that he had worked at the facility, his loss was not related to his employment.

On August 30, 2006 Dr. Duane Taylor, an Office medical adviser, stated that he could not reach a decision in appellant's case because the record did not contain information about the calibration of the audiometers used in the two most recent audiograms. On September 28, 2006 the Office notified appellant and the employing establishment of the missing information and requested that it be supplied within 15 days.[1]

By decision dated December 1, 2006, the Office denied appellant's claim on the grounds that he had submitted insufficient evidence to establish that the events occurred as alleged.

On December 8, 2006 the Office rescinded the December 1, 2006 decision and referred appellant for a second opinion examination with Dr. Alan Keyes, a Board-certified otolaryngologist. On January 12, 2007 Dr. Keyes found that appellant had sensorineural loss in excess of what would be predicted on the basis of presbycusis and that his workplace exposure was sufficient to have caused the loss. He noted that the loss pattern was characteristic of noise-related hearing loss. Dr. Keyes found that, for 500, 1,000, 2,000 and 3,000 cycles per

[1] On December 8, 2006 appellant submitted the requested information. It was received by the Office on December 13, 2006.

second, (cps) appellant had, respectively, 5, 10, 20 and 65 decibel losses for the right ear and 5, 10, 25 and 65 decibel losses for the left ear.[2] Based on the formula from the American Medical Association, *Guides for the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), he found that appellant had 0 percent monaural impairment for the right ear and 1.9 percent monaural impairment of the left ear.

By decision dated January 18, 2007, the Office accepted appellant's claim for bilateral sensorineural hearing loss. The Office authorized appellant to receive hearing aids, but stated that, based on the opinion of Dr. Keyes, he was not eligible for a schedule award because his hearing loss was not ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations sets 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.[3] However, the Act does not specify the manner in which the percentage of loss is to 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.[4]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[5] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[6] 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.[7] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[8] 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

[2] The results were identical for bone conduction losses, with the exception of 2,000 cps in the left ear, which had a 20, rather than 25, decibel loss.

[3] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.404.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides* at 246-51 (5th ed. 2001).

[6] *Id.*

[7] *Id.*

[8] *Id.*

amount of the binaural hearing loss.[9] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[10]

ANALYSIS

The Office found that appellant sustained hearing loss causally related to his federal employment duties, but that it was not ratable. Therefore the issue to be resolved is whether his hearing loss is substantial enough to entitle him to a schedule award.

On January 12, 2007 Dr. Alan Keyes, a Board-certified otolaryngologist, found that appellant had a sensorineural hearing loss pattern characteristic of noise-related loss. He stated that that the workplace exposure was sufficient to have caused the loss. Dr. Keyes measured air conduction losses as, respectively, 5, 10, 20, and 65 decibels for the right ear and 5, 10, 25 and 65 decibels for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps. The right ear decibel losses, added together, totaled 100 decibels, which, when divided by 4, resulted in an average hearing loss of 25 decibels. Dr. Keyes reduced the average loss by the "fence" of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, resulted in a 0 percent monaural hearing loss for the right ear. Based on this same formula, Dr. Keyes found that appellant had a 1.9 percent monaural impairment of the left ear. The Board finds that Dr. Keyes properly followed the A.M.A., *Guides* when he found that appellant had 0 percent monaural impairment for the right ear and a 1.9 percent monaural impairment of the left ear.

In its January 18, 2007 decision, the Office incorrectly stated that Dr. Keyes' opinion established that appellant had no ratable hearing loss. The Board notes that the record does not contain the report of an Office medical adviser or other physician finding that Dr. Keyes misapplied the A.M.A., *Guides* or that his findings were inaccurate. As the record establishes that appellant has a ratable hearing loss in his left ear, the Board finds that the January 18, 2007 decision of the Office should be reversed in part and remanded for awarding of a schedule award in the amount of a two percent monaural, left ear, loss of hearing.[11]

CONCLUSION

The Board finds that appellant has established that he is entitled to a schedule award for two percent monaural, left ear, employment-related hearing loss.

[9] *Id.*

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

[11] The A.M.A., *Guides* provide that rounding off is to be to the nearest whole number. A.M.A. *Guides* at 20. *See e.g., Jesse Mendoza*, 54 ECAB 802, 806 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2007 is affirmed in part and reversed in part and remanded for action consistent with this decision.

Issued: February 14, 2008
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