

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

J.O., Appellant

and

**U.S. POSTAL SERVICE, RICON ANNEX POST
OFFICE, San Diego, CA, Employer**

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**Docket No. 08-735
Issued: September 10, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 14, 2008 appellant filed a timely appeal of the November 20, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative affirming the denial of his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has more than a 10 percent binaural hearing loss.

FACTUAL HISTORY

On August 14, 1987 appellant, then a 36-year-old mail carrier, filed an occupational disease claim (Form CA-2). In 1975, he first became aware of his hearing loss, with ringing in his ears while working as a letter sorting machine (LSM) operator from January 1969 through August 1983.¹ The record reveals that the employing establishment tested appellant's hearing

¹ The record reveals that appellant was employed as a mail carrier after August 1983 until he retired on March 9, 2004.

this time. Appellant further alleged that in 1983 he first realized that his conditions were caused by his federal employment. By letter dated June 15, 1988, the Office accepted the claim for binaural high frequency neurosensory hearing loss.

On September 28, 1988 appellant filed a claim (Form CA-7) for a schedule award. By decision dated June 27, 1989, the Office granted him a schedule award for 10 percent binaural hearing loss.

In a March 18, 2003 letter, the employing establishment stated that appellant's prior hearing loss claim was no longer active and that he wished to have it reopened. On March 16, 2004 the employing establishment stated that, effective March 9, 2004, appellant retired on disability through the Office of Personnel Management (OPM).

By letter dated December 20, 2004, the Office requested that appellant complete a CA-7 form for an increased schedule award and set forth the medical evidence needed to establish his claim.²

On January 28, 2005 appellant filed a CA-7 form. In a January 28, 2005 letter, Dr. Wayne H. Fenton, Jr., an attending Board-certified otolaryngologist, recommended an evaluation by a physician who was familiar with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) to determine the extent of his permanent impairment.

By letter dated March 20, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Nancy H. Appelblatt, a Board-certified otolaryngologist, for a second opinion medical examination.

In an April 26, 2006 medical report, Dr. Appelblatt stated that appellant had a noise-induced hearing loss. She further stated that he had severe high frequency sensorineural hearing loss bilaterally with marked noise-induced damage. Dr. Appelblatt related that this was consistent with appellant's complaints of bilateral tinnitus. She indicated that even with aids he read lips, probably due to poor discrimination. Dr. Appelblatt stated that, with aids, appellant reached the 15 decibel (dB) sound field with only 52 percent discrimination. She opined that his hearing loss was attributable to his occupational noise exposure. Dr. Appelblatt stated that the mail sorting rooms had been rated at 85 dB over eight hours, but had peaked at 115 dB. She also stated that appellant required bilateral digital hearing aids and that he may be helped by neurentin for treatment of his dizziness/hypersensitivity/recruitment. Dr. Appelblatt determined that he sustained 71 percent impairment of the right ear and 60 percent impairment of the left ear, resulting in 22 percent impairment of the whole person based on an accompanying audiogram that was performed for her on April 7, 2006.

On May 4, 2007 Dr. Brian E. Schindler, an Office medical adviser, reviewed appellant's case record, including Dr. Appelblatt's April 26, 2006 report. He noted, among other things, that

² The Board notes that the Office did not determine that appellant had filed a new hearing loss claim. It evaluated his request for an increased schedule award under the same number, 13083297, assigned to his original CA-2 claim form.

appellant was exposed to noise at the employing establishment from 1969 until August 1983 and that he had not worked in a noisy environment since that time. Dr. Schindler agreed with Dr. Appelblatt's opinion that appellant's hearing loss was caused by his work-related noise exposure. He stated that his hearing loss had deteriorated since 1987. Dr. Schindler opined that if the dates of appellant's federal noise exposure were correct, then his hearing loss subsequent to 1987 was not due to his federal employment. He found that his hearing loss in 1987 was sufficient to qualify him for hearing aids.

By decision dated June 25, 2007, the Office found that appellant had no more than a 10 percent binaural hearing loss based on Dr. Schindler's May 4, 2007 report. On July 19, 2007 appellant requested a review of the written record by an Office hearing representative.

In a July 24, 2007 report, Dr. Appelblatt stated that appellant suffered from severe to profound bilateral sensorineural hearing loss due to acoustic trauma and cumulative noise exposure, tinnitus and hyperacusis. She determined that he sustained 63.8 percent impairment of the right ear and 71.2 percent impairment of the left ear, resulting in 65.03 percent binaural hearing loss and 23 percent impairment of the whole man. Dr. Appelblatt further determined that appellant sustained 41.2 percent binaural hearing loss with aids. She recommended "CHAMP" testing.

In a July 30, 2007 report, Dr. Appelblatt stated that "CHAMP" testing could not be completed due to a lack of identifiable wave forms at the limits of the test.

By decision dated November 20, 2007, an Office hearing representative affirmed the June 25, 2007 decision. She found the medical evidence of record insufficient to establish that appellant sustained any increased hearing loss due to his accepted work-related noise exposure.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he or she may apply for an additional schedule award for any increased permanent impairment. The Board has recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record. In this latter instance, the request for an increased schedule award is not deemed a new claim.¹²

Causal relationship is a medical issue that can be established only by medical evidence.¹³ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.¹⁴

ANALYSIS

On June 27, 1989 the Office granted appellant a schedule award for 10 percent binaural hearing loss. The Board notes that, hazardous noise exposure ended in August 1983, when appellant changed positions from an LSM operator to mail carrier where he worked until his retirement on March 9, 2004. The evidence supports that appellant's workplace noise exposure significantly decreased after August 1983.

The Office referred appellant to Dr. Appelblatt who stated in an April 26, 2006 report that appellant suffered from severe high frequency sensorineural hearing loss bilaterally with marked noise-induced damage due to his work-related noise exposure. She determined that he sustained 71 percent impairment of the right ear and 60 percent impairment of the left ear, resulting in 22 percent impairment of the whole person based on an April 7, 2006 audiogram performed on her behalf. Dr. Appelblatt's July 24, 2007 report stated that appellant sustained

⁷ A.M.A., *Guides* 250 (5th ed. 2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Paul Fierstein*, 51 ECAB 381 (2000).

¹³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁴ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

63.8 percent impairment of the right ear and 71.2 percent impairment of the left ear, resulting in 65.03 percent binaural hearing loss and 23 percent impairment of the whole man. She further determined that he sustained 41.2 percent binaural hearing loss with aids. Dr. Appelblatt did not provide a rationalized opinion explaining how or why appellant's increased hearing loss was caused by his accepted workplace hazardous noise exposure as he was no longer exposed to such noise after changing jobs from an LSM operator to a mail carrier in 1983 and his retirement from the employing establishment in March 2004. The Board, therefore, finds that her reports are of diminished probative value.

In a May 4, 2007 report, Dr. Schindler, an Office medical adviser, opined that appellant's increased hearing loss subsequent to 1987, when he was awarded a schedule award for 10 percent binaural hearing loss, was not due to his federal employment. Although he agreed with Dr. Appelblatt's opinion that appellant's hearing loss was caused by his work-related noise exposure, he stated that the exposure occurred from 1969 through August 1983 and that appellant had not worked in a noisy environment since that time. Dr. Schindler stated that, if the dates of appellant's federal noise exposure were correct, then his hearing loss subsequent to 1987 was not due to his federal employment.

The Board finds that the medical evidence of record does not support that appellant has any increased hearing loss causally related to his accepted workplace noise exposure or to the progression of his previously accepted hearing loss. Dr. Schindler provided a thorough and rationalized medical report explaining how the increased hearing loss was not due to the employment. Appellant has not submitted any recent rationalized medical opinion supporting that any increase in his hearing loss is employment related. Thus, the Board finds that there is no evidence that appellant has more than 10 percent binaural hearing loss, for which he received a schedule award.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to a schedule award for his binaural (both ears) employment-related loss of hearing greater than the 10 percent awarded.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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