United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 08-1661**
	)	**Issued: January 23, 2009**
DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, Lakehurst, NJ, 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 May 27, 2008 appellant timely appealed a July 10, 2007 merit decision of the Office of Workers' Compensation Programs denying authorization for hearing aids, and the May 5, 2008 merit decision, which determined that appellant was not entitled to a schedule award as he did not have a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this appeal.

ISSUES

The issues are: (1) whether appellant has a ratable hearing loss entitling him to a schedule award; and (2) whether the Office properly denied authorization for hearing aids.

FACTUAL HISTORY

On October 31, 2006 appellant, then a 62-year-old sheet metal mechanic, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his

employment. He submitted audiograms for the period June 11, 1987 to October 18, 2006, all of which were unsigned or bore illegible signatures.

The Office referred appellant to Dr. Sean M. Smullen, a Board-certified otolaryngologist, for a second opinion evaluation and an opinion as to the nature and extent of appellant's hearing loss and the extent of any permanent impairment. An audiogram was completed on May 23, 2007 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 15, 5, 20 and 60 respectively, and on the right of 15, 5, 10 and 60 respectively. In a report dated July 2, 2007, Dr. Smullen stated that he had reviewed previous audiograms. Testing and examination revealed excellent speech discrimination (100 percent in each ear) and normal speech reception thresholds. Tympanic membranes reflected normal pressure. Dr. Smullen diagnosed bilateral high frequency sensorineural hearing loss. He concluded that appellant had reached maximum medical improvement, and opined that appellant's workplace exposure, as described in the statement of accepted facts, was sufficient in intensity and duration to have caused the hearing loss in question. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Smullen determined that appellant did not have a ratable hearing loss. He further concluded that, though appellant might require amplification in the future, he did not need hearing aids at the time of the examination, given that his hearing was normal up to 2,000 Hertz (Hz), and only dropped between 2,000 Hz and 3,000 Hz.

In a decision dated July 10, 2007, the Office accepted appellant's claim for bilateral sensorineural hearing loss, but denied authorization for hearing aids.

Appellant requested a schedule award. The Office forwarded the May 23, 2007 audiogram and Dr. Smullen's report to the district medical adviser for his review and assessment of appellant's permanent impairment pursuant to the fifth edition of the A.M.A., *Guides*. The medical adviser found that appellant had reached maximum medical improvement on May 23, 2007. He applied the Office's standardized procedures to the May 23, 2007 audiogram. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 5, 10 and 60 respectively. These decibel losses were totaled at 90 and divided by 4 to obtain the average hearing loss per cycle of 22.5. The average of 22.5 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. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 5, 20 and 60 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 left ear. The 0 was multiplied by 1.5, resulting in a 0 percent loss for the left ear. The Office medical adviser found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides*. He also recommended that the Office deny authorization for hearing aids.

On May 5, 2008 the Office denied appellant's request for a schedule award, finding that his bilateral hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT -- ISSUE 1

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 regulations have adopted the 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]

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]

ANALYSIS -- ISSUE 1

In support of his claim for an employment-related hearing loss, appellant submitted audiograms for the period June 11, 1987 to October 18, 2006, all of which were unsigned or bore illegible signatures. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing. The audiograms were not certified by a physician as being accurate. The Office is not required to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist.[8]

The Office referred appellant for a second opinion examination by Dr. Smullen, a Board-certified otolaryngologist, who examined appellant and reviewed an audiogram performed at his

[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).

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

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Robert E. Cullison*, 55 ECAB 570 (2004).

direction. An Office medical adviser reviewed the audiogram and Dr. Smullen's May 23, 2007 report, and correctly applied the Office's standardized procedures to the May 23, 2007 audiogram. Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency were added up and averaged for each ear.[9] Then, the "fence" of 25 decibels was deducted in each case because, as the A.M.A., *Guides* indicates, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.[10] The remaining amount, 0, was multiplied by a factor of 1.5 to arrive at a 0 percent monaural hearing loss.[11] To determine the binaural hearing loss, the lesser loss was multiplied by five, added to the greater loss, and divided by six. The medical adviser correctly concluded that appellant had a zero percent binaural hearing loss under the relevant standards of the A.M.A., *Guides*, and thus did not have a ratable hearing loss.[12]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[13] The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.[14]

ANALYSIS -- ISSUE 2

The Board finds that the Office did not abuse its discretion in denying authorization for hearing aids.

Dr. Smullen, the second opinion physician, noted that appellant had excellent speech discrimination (100 percent in each ear) and normal speech reception thresholds. He stated that appellant's functional loss was not significant. Dr. Smullen opined that, although appellant might require amplification in the future, he did not need hearing aids at the time of the examination, given that his hearing was normal up to 2,000 Hz, and only dropped between 2,000 Hz and 3,000 Hz. He provided a rationalized explanation as to why appellant did not require hearing aids. Further, there is no medical evidence of record containing a recommendation that appellant be provided with hearing aids or any other medical treatment for his employment-

[9] A.M.A., *Guides* 250.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] 5 U.S.C. § 8103(a).

[14] *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

related hearing loss. Therefore, the Board finds that, under these circumstances, the Office acted within its discretion under section 8103(a) to deny authorization for hearing aids.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award. The Board further finds that the Office did not abuse its discretion in denying authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2008 and July 10, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 23, 2009
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