

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

P.P., Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Flagstaff, AZ, Employer**

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**Docket No. 08-2257
Issued: March 25, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 5, 2008 appellant timely filed an appeal from the Office of Workers' Compensation Programs' July 15, 2008 merit decision, which denied her claim for compensation based on hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained a left eardrum injury on May 22, 2008 causing a ratable hearing loss causally related to factors of her federal employment.

FACTUAL HISTORY

On June 2, 2008 appellant, a 26-year-old forest ranger, filed a Form CA-1 claim for benefits, alleging that she sustained hearing loss in her left ear on May 22, 2008 when a coworker blew an air horn while standing two feet away from her.

On June 10, 2008 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a June 2, 2008 report, Dr. Nicholas B. Martin, a Board-certified family practitioner, noted that appellant was exposed to noise when a coworker blew an air horn while standing two feet away from her. He noted that appellant underwent an audiogram which showed no evidence of hearing loss. No audiogram reports were submitted to the record.

By decision dated July 15, 2008, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained a ratable hearing loss in the performance of duty on May 22, 2008.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act¹ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluation of schedule losses.²

It is the claimant's burden to establish that he or she has sustained a permanent impairment of the scheduled member or function as a result of an employment injury.³ Office procedures provide that to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement,) describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A. *Guides*.⁴

¹ 5 U.S.C. § 8107.

² A.M.A. *Guides*, (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

³ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(b) (August 2002).

ANALYSIS

The Board finds that appellant failed to submit the medical opinion evidence necessary to establish that she sustained a permanent impairment and ratable hearing loss caused by the May 22, 2008 work accident .

In this case, the Office has accepted that appellant was exposed to a loud noise event at work on May 22, 2008. Appellant's claim was denied as appellant did not establish that she sustained a permanent impairment as a result of this incident.

The only medical report appellant submitted was the June 2, 2008 report from Dr. Martin, who stated the history of injury and had appellant undergo an audiogram. This report, however, did not contain a diagnosis relating to the May 22, 2008 incident at work. This report also does not provide the necessary evidence to support appellant's claim because it does not provide any findings pertinent to a permanent impairment. Even in a claim for hearing loss it remains appellant's burden to submit some evidence in support of a permanent impairment. Although appellant alleged that she sustained a hearing loss due to her close proximity to an air horn, she did not submit medical evidence sufficient to show that she had any measurable permanent impairment, that she had reached maximum medical improvement or that she had a ratable hearing loss causally related to the May 22, 2008 work incident. Dr. Martin's report in fact negates appellant's claim as it indicates that appellant has no hearing loss, and thus no permanent impairment.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains any permanent impairment caused by the May 22, 2008 work incident. Accordingly, she did not establish that she sustained a ratable hearing loss in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained permanent impairment causing a ratable hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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