

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

T.G., Appellant

and

DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, GA, Employer

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**Docket No. 09-1298
Issued: January 25, 2010**

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 April 22, 2009 appellant filed a timely appeal from the January 14, 2009 decision of the Office of Workers' Compensation Programs which denied his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether the Office properly denied appellant's claim for a schedule award for hearing loss.

FACTUAL HISTORY

On September 25, 2007 appellant, then a 59-year-old aircraft mechanic, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. He became aware of his hearing loss on August 30, 1978 and had continuing exposure to noise at his job.

On October 26, 2007 the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. It also requested information from the employing establishment addressing appellant's claim.

The employing establishment submitted audiograms taken on its behalf from April 15, 1976 to May 6, 2008 which revealed mildly progressive hearing loss and tinnitus. Also submitted were employer medical records from February 28, 1975 to June 26, 2006 which noted appellant participated in an occupational health and hearing conservation program beginning in 1983 and was tested annually and required to wear earplugs.

Appellant submitted an employment history with a job description for an aircraft mechanic. In an accompanying statement, he noted working from May 17, 1977 to January 18, 1978 as an aircraft attendant, from January 18, 1978 to February 28, 1985 as a director of aircraft maintenance and from February 28, 1985 to the present as an aircraft mechanic. Appellant noted spending up to five hours a day working around aircraft where he was exposed to noise from aircraft engines. He reported no exposure to hazardous noise outside of his employment. A December 10, 2007 statement of accepted facts set forth appellant's noise exposure history prior to and during his employment with the employing establishment.

By letter dated December 13, 2007, the Office referred appellant and the statement of accepted facts to Dr. Kenneth J. Walker, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a January 14, 2008 report, Dr. Walker noted examining appellant and opined that his hearing loss was consistent with presbycusis. He performed an otologic evaluation of appellant on January 7, 2008 and audiometric testing was conducted on his behalf that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 15, 20 and 25 decibels; left ear 15, 15, 15 and 20 decibels. Dr. Walker noted tympanometry revealed normal tracings bilaterally and the audiogram revealed mild high frequency sensorineural hearing loss bilaterally. He also diagnosed tinnitus.

On January 16, 2008 the Office denied appellant's claim for a schedule award on the grounds that the Office referral physician determined his sensorineural hearing loss was not the result of workplace exposure to hazardous noise but was due to presbycusis or the normal aging process.

On January 29, 2008 appellant requested an oral hearing.

In a decision dated April 17, 2008, an Office hearing representative set aside the January 16, 2008 decision and remanded the case for further medical development. The hearing representative noted that the Office referral physician diagnosed presbycusis and tinnitus but failed to offer an opinion on the relationship between the diagnosed tinnitus and appellant's employment and remanded the matter for further clarification.

On April 28, 2008 the Office requested clarification from Dr. Walker with respect to whether appellant's diagnosed tinnitus was caused or aggravated by his employment. In an April 28, 2008 report, Dr. Walker found that appellant's hearing loss was related to presbycusis. He further noted that appellant's tinnitus was related to his hearing loss but may have been aggravated by his noise exposure during employment. Dr. Walker noted tinnitus did not

typically impact activities of daily living and recommended appellant continue to practice hearing conservation measures and have audiograms performed annually.

On May 9, 2008 an Office medical adviser reviewed Dr. Walker's reports and concurred that appellant's tinnitus was aggravated by appellant's employment but was not permanent. The medical adviser rated appellant's hearing impairment for schedule award purposes. He concluded that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's standards for evaluating hearing loss to the results of the January 7, 2008 audiogram.

On May 14, 2008 the Office accepted appellant's claim for temporary aggravation of bilateral tinnitus.

On May 22, 2008 appellant filed a claim for a schedule award.

In a decision dated June 3, 2008, the Office noted that although appellant's hearing loss was employment related it was not severe enough to be considered ratable for purposes of a schedule award.

On June 6, 2008 appellant requested an oral hearing which was held on October 22, 2008.

In a January 14, 2009 decision, the Office affirmed the June 3, 2008 decision finding. While appellant had an employment-related hearing loss, it was not ratable for schedule award purposes.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set 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. However, the Act does not specify the manner in which the percentage of loss shall 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 regulations 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 cycles per second,

¹ A.M.A., *Guides* (5th ed. 2001).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

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 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 referred appellant to Dr. Walker regarding his hearing loss. In a January 14, 2008 report, Dr. Walker noted that appellant’s hearing loss was consistent with presbycusis but, in an April 28, 2008 supplemental report, he determined that appellant’s employment had aggravated his tinnitus. An Office medical adviser reviewed Dr. Walker’s findings and agreed that appellant’s bilateral tinnitus was aggravated by his employment. The medical adviser applied the Office’s standardized procedures to the January 7, 2008 audiogram performed for Dr. Walker to determine if appellant’s hearing loss was ratable for schedule award purposes. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 15, 20 and 25, respectively. These decibels were totaled at 75 and were divided by 4 to obtain an average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 15, 15 and 20 respectively. These decibels were totaled at 65 and were divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to Dr. Walker’s reports and the January 7, 2008 audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above. The Board notes that the A.M.A., *Guides* provides for the addition of up to five percent impairment for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living.¹¹ As noted, the Office accepted a bilateral temporary aggravation of tinnitus.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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

¹¹ A.M.A., *Guides* 246.

However, the Office medical adviser applied the proper standards to the findings stated in Dr. Walker's report and audiogram and determined that appellant did not have a ratable hearing loss. In the absence of a ratable hearing loss, a schedule award for tinnitus is not appropriate.¹²

On appeal appellant asserts that the Office decision was unjust and he was exposed to noise from aircraft engines for long periods of time which caused bilateral tinnitus and permanent impairment. The Board notes that, while appellant has an accepted temporary aggravation of tinnitus bilaterally, his hearing loss is not, as discussed above, ratable under the standards used by the Office to determine permanent impairment for schedule award purposes.

CONCLUSION

The Board finds the Office properly denied appellant's claim for a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2009 and June 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 25, 2010
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

¹² *L.S.*, 57 ECAB 725 (2006). Furthermore, Dr. Walker did not support that appellant's tinnitus impacted his activities of daily living.