

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

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R.T., Appellant )

and )

DEPARTMENT OF THE NAVY, NAVAL AIR )  
SYSTEMS COMMAND, Cherry Point, NC, )  
Employer )

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**Docket No. 09-2295  
Issued: June 16, 2010**

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 15, 2009 appellant filed a timely appeal from the July 8 and 30, 2009 merit decisions of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of his case.

**ISSUES**

The issues are: (1) whether appellant established that he sustained a ratable hearing loss in the performance of duty; and (2) whether the Office properly denied his request for hearing aids.

**FACTUAL HISTORY**

On July 1, 2008 appellant, a 61-year-old aircraft examiner, filed an occupational disease claim (Form CA-2) for hearing loss that he attributed to employment-related noise exposure. He first became aware of his hearing loss and that it was caused by his employment on January 1, 1988.

Appellant submitted results from historical audiograms as well as a report, dated October 11, 2000, in which Dr. Tamara C. Babb, Board-certified in family medicine, diagnosed high-frequency hearing loss. He also submitted a May 1, 2001 note, in which an audio technologist stated that appellant needed hearing aids because of his hearing loss.

The district medical adviser reviewed these audiograms and, on July 16, 2008, concluded that the earliest available employment audiogram, conducted on January 22, 1978, revealed normal hearing in appellant's left ear but moderate high-frequency hearing loss in appellant's right ear. Furthermore, the district medical adviser reported that the most recent of these studies, dated May 1, 2006, revealed moderate high-frequency hearing loss in appellant's left ear and severe high-frequency hearing loss in appellant's right ear.

In an undated note, appellant described his employment-related noise exposure.

The Office referred appellant, together with a statement of facts, for evaluation by Dr. Charles Beasley, a Board-certified otolaryngologist. On December 3, 2008 Dr. Beasley diagnosed bilateral sensorineural hearing loss. By check mark, he opined that appellant's hearing loss was employment related. Dr. Beasley recommended appellant be evaluated for hearing aids. He reported that an audiogram conducted on November 19, 2008, reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and showed the following decibel losses of 25, 15, 25 and 30 in the right ear and 20, 15, 25 and 35 in the left ear.

On December 5, 2008 the district medical adviser, after reviewing Dr. Beasley's report and the November 19, 2008 audiogram, concluded that appellant's bilateral sensorineural hearing loss was not ratable. By check mark, the district medical adviser denied authorization for hearing aids.

By decision dated December 8, 2008, the Office accepted appellant's claim for employment-related hearing loss but found that, because appellant's hearing loss was not ratable, he was not entitled to a schedule award. It also denied authorization for hearing aids.

On December 11, 2008 appellant requested an oral hearing.

Appellant submitted results from additional audiograms.

By decision dated July 8, 2009, the Office affirmed its December 8, 2008 decision, because appellant had not established that he sustained a ratable hearing loss. However, it remanded the case for further development concerning appellant's hearing aid request.

On July 22, 2009 Dr. A.E. Anderson, Jr., an Office medical adviser, after reviewing Dr. Beasley's November 19, 2008 report, reasoned that appellant did not require hearing aids to treat his nonratable bilateral hearing loss because his pure tone averages and speech reception threshold of 20 decibels bilaterally were normal, implying a normal ability to recognize speech as a meaningful symbol. Further, he stated that the speech discrimination scores and appellant's ability to discriminate various speech were also normal.

By decision dated July 30, 2009, the Office denied authorization, because the evidence of record did not establish that hearing aids were a medically necessary treatment for his accepted hearing loss.

## LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the losses at each frequency are added up and averaged.<sup>6</sup> Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> 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, added to the greater loss, and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Office medical adviser applied the Office's standardized procedures to the November 19, 2008 audiogram obtained by Dr. Beasley. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 25, 15, 25 and 30 respectively. These totaled 95 decibels which, when divided by 4, yields an average hearing loss of 23.75 decibels. The average of 23.75 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 produces a zero percent hearing loss in the right ear.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the left ear of 20, 15, 25, and 35 respectively. These totaled 95 decibels, which, when divided by 4, yields an average hearing loss of 23.75 decibels. The average of 23.75 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 produces a zero percent hearing loss in the left ear.

Although appellant submitted reports containing results from historical audiograms, they are insufficient to satisfy appellant's burden of proof as they do not comply with the requirements set forth by the Office. They lack speech testing and bone conduction scores and were not prepared or certified as accurate by a "physician" as defined by the Act.<sup>10</sup> It is appellant's burden to submit a properly prepared and certified audiogram to the Office.<sup>11</sup> The Office is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence.

Therefore, the Board finds that the evidence of record establishes that appellant's hearing loss is not ratable.

### **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.<sup>12</sup> 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the record does not support that hearing aids are necessary to treat appellant's hearing loss. After reviewing Dr. Beasley's findings and accompanying audiogram, Dr. Anderson checked the block marked "no" in response to the question as to whether hearing aids were authorized. In his supplemental note, he reasoned that appellant did not require hearing aids to treat his nonratable bilateral hearing loss because his pure tone averages and speech reception threshold of 20 decibels bilaterally were normal, implying a normal ability to recognize speech as a meaningful symbol. Further, Dr. Anderson stated that the speech discrimination scores and appellant's ability to discriminate various speech were also normal.

Dr. Anderson provided a rationalized explanation for why hearing aids are not necessary and, furthermore, there is no medical evidence of record containing a recommendation that appellant be provided with hearing aids. While appellant submitted a May 1, 2001 note in which

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<sup>10</sup> *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. § 8103(a).

<sup>13</sup> *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).

an audio technologist states that appellant needs hearing aids because of his hearing loss, an audio technologist is not a “physician” for purposes of the Act<sup>14</sup> and, consequently, this note does not qualify as competent medical evidence.

Accordingly, 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 appellant has not established that he sustained a ratable hearing loss in the performance of duty. The Board also finds that the Office properly denied appellant’s request for hearing aids.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30 and 8, 2009 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: June 16, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees’ Compensation Appeals Board

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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<sup>14</sup> 5 U.S.C. §§ 8101-8193.