United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 09-2028**
TENNESSEE VALLEY AUTHORITY, JOHN SEVIER FOSSIL PLANT, Rodgersville, TN, Employer	)	**Issued: May 19, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 4, 2009 appellant filed a timely appeal of a March 16, 2009 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had a ratable hearing loss warranting a schedule award.

FACTUAL HISTORY

On October 16, 2008 appellant, then a 60-year-old electrician contractor, filed an occupational disease claim alleging that he sustained hearing loss to both ears due to high noise levels in the performance of duty. He first became aware of his hearing loss and related it to his employment on March 9, 2007. Appellant noted that he could not hear small leaks in work

equipment, he had to increase the volume on his telephone, he asked relatives to speak louder and coworkers had to repeat their statements. He did not stop work.

On October 27, 2008 the Office requested additional evidence. Appellant submitted various employment records including audiograms dated between May 25, 1978 and March 9, 2007.

In an undated statement, appellant noted that he was in the military from 1968 to 1971 where he fired weapons and worked on jet turbine engines. He worked on a dam project for the employing establishment between 1972 and 1976 where he worked with rock drills, jackhammers and chain saws. Beginning in 1976 appellant worked for the employing establishment as an electrician and was exposed to noise from saws, drills, power tools, high pressure air blast circuit breakers and high pressure air compressors.

In an undated statement, appellant's supervisor noted that appellant was provided with hearing protection at work. He advised that appellant was exposed to machinery noise from air compressors and high voltage breaker operations that were typical of the nature of appellant's job. Appellant's supervisor indicated that appellant was exposed to workplace noise between three to five hours per day for three to five days per week.

The record also contains a December 11, 2008 report from Whitney Mauldin, an employing establishment audiologist, who opined that appellant's asymmetrical hearing loss was inconsistent with his occupational noise exposure. Ms. Mauldin advised that appellant's March 9, 2007 audiogram results yielded no permanent impairment in both ears according to the American Academy of Otolaryngology Guidelines.

On December 29, 2008 the Office referred appellant, with a statement of accepted facts, to Dr. Leonard Brown, a Board-certified otolaryngologist, for a second opinion evaluation.

In a January 15, 2009 report, Dr. Brown noted that appellant had a history of noise exposure associated with his employment since 1974 and significant hearing loss associated with his employment beginning in 2007. He compared appellant's prior audiogram results with the evaluation performed that day on his behalf. At the time of appellant's initial employment in 1974, he had essentially normal hearing, and then sustained noticeable hearing loss. Dr. Brown noted that the left ear exceeded normal levels at 6,000 cycles per second (cps) in 1995 and sustained a drop at 3,000 and 4,000 cps in 2007 consistent with appellant's history. He also noted this was confined predominantly to the left ear. Based on the hearing evaluation performed during his examination, Dr. Brown found mild low frequency loss in the left ear at 30 decibels at 500 cps, normal hearing at 1,000 and 2,000 cps and a drop in the left ear at 3,000 and 4,000 cps to 40 and 35 decibels respectively. He diagnosed bilateral hearing loss. Dr. Brown opined that appellant's medical records were consistent with noise exposure encountered at the employing establishment, but because of the asymmetrical character of hearing loss in the left ear, he recommended a brain magnetic resonance imaging (MRI) scan to ensure there was no underlying acoustic neuroma or similar problem in the left ear that contributed to the preponderance of appellant's hearing loss.

In an otologic evaluation form of the same date, Dr. Brown advised that he was unable to comment on audiometric data from the beginning of appellant's workplace noise exposure as it was an illegible report. Appellant's 1974 report, however, showed normal hearing. Dr. Brown indicated that present audiometric findings were inconsistent with presbycusis. He stated that there were unknown levels of workplace noise exposure to determine if such exposure was sufficient in intensity and duration to cause hearing loss, but that the levels exceeded Occupational Safety and Health Administration (OSHA) standards. Dr. Brown noted that other relevant history included military service in the 1960s. He diagnosed asymmetrical sensorineural hearing loss. Dr. Brown opined that appellant's hearing loss was due to workplace noise exposure but determining why the hearing loss was asymmetrical was not a work-related issue. He recommended a brain MRI scan. In an addendum report of the same date, Dr. Brown found right nasal septal deviation with Grade 3 palate. A January 15, 2009 audiogram performed on his behalf showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cps: 15, 15, 10 and 15 for the right ear and 30, 10, 10 and 40 for the left ear. Dr. Brown indicated that the audiometric test results were valid and representative of appellant's hearing sensitivity.

On March 4, 2009 an Office medical adviser reviewed the medical evidence from Dr. Brown and advised that the date of Dr. Brown's report was the date of maximum medical improvement. He applied the Office's standard for evaluating hearing loss and determined that appellant had a zero percent monaural hearing loss in the right ear and a zero percent monaural hearing loss in the left ear. The medical adviser concluded that appellant had no binaural hearing loss and that hearing aids were not authorized. He noted that appellant should be advised that the second opinion physician recommended a brain MRI scan to rule out acoustic neuroma, but that this would not be work related.

In a March 16, 2009 decision, the Office accepted appellant's claim for hearing loss. It further found that appellant's hearing loss was not severe enough to be considered ratable for schedule award purposes. The Office also found that the medical evidence showed that appellant would not benefit from hearing aids. It also advised that the recommended brain MRI scan would not be considered a work-related medical test.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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*

[1] 5 U.S.C. §§ 8101-8193.

Permanent Impairment (5th ed. 2001) (A.M.A., *Guides*) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[2]

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

ANALYSIS

Appellant submitted a schedule award claim for hearing loss. The Office developed the claim by referring him to Dr. Brown. On January 15, 2009 Dr. Brown examined appellant and audiometric testing was performed on the physician's behalf. He opined that noise exposure at appellant's workplace was sufficient to cause asymmetrical sensorineural hearing loss. Dr. Brown did not indicate whether appellant required hearing aids.

An Office medical adviser applied the Office standard procedures to the January 15, 2009 audiogram. It tested decibel losses at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 15, 15, 10 and 15 respectively in the right ear. The total decibel loss in the right ear is 55 decibels. When divided by 4, the result is an average hearing loss of 13.75 decibels. The average loss of 13.75 is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 30, 10, 10 and 40 respectively for a total decibel loss of 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 decibels is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the left ear. The medical adviser found no medical need for hearing aids. The Board finds that the Office medical adviser properly applied the standards to the findings of the January 15, 2009 audiogram and concluded that appellant did not have a ratable hearing loss for schedule award purposes. There is no audiogram of record, reviewed by a physician, to establish that appellant has a ratable hearing loss.

Appellant argued that his hearing loss affected his daily life as he had to increase the volume on his phone, ask relatives to speak louder and coworkers had to repeat their statements. The Board notes that the Office applied its standardized procedure for calculating permanent impairment based on loss of hearing. Appellant's hearing loss is not ratable for schedule award

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[2] *R.D.*, 59 ECAB ___ (Docket No. 07-379, issued October 2, 2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

[3] *E.S.*, 59 ECAB ___ (Docket No. 07-1587, issued December 10, 2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted* (*modifying prior decision*), Docket No. 01-1570 (issued August 13, 2002).

purposes. The Board has held that factors such as limitations on daily activities do not factor into the calculation of a schedule award.[4]

Consequently, the Board finds that the weight of the medical evidence establishes that appellant has no ratable loss of hearing pursuant to the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 16, 2009 is affirmed.

Issued: May 19, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[4] *E.L.*, 59 ECAB ___ (Docket No. 07-2421, issued March 10, 2008).