United States Department of Labor
Employees' Compensation Appeals Board

L.N., Appellant	)	
and	)	**Docket No. 09-2056**
	)	**Issued: May 11, 2010**
DEPARTMENT OF THE NAVY, HILL AIR FORCE BASE, UT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 27, 2009 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 schedule award claim for hearing loss.

FACTUAL HISTORY

On September 2, 2008 appellant, then a 59-year-old plastic fabricator supervisor, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. He

became aware of his hearing loss on September 2, 1988 and had continuing exposure to noise at his job until his retirement on September 30, 2007.[1]

On February 19, 2009 the Office requested additional medical evidence from appellant noting that the evidence submitted was insufficient to establish his claim. It also requested information from the employing establishment addressing appellant's claim.

In a March 2009 statement, appellant advised that he related his hearing loss to his employment on September 1, 1988 after an explosion at work which resulted in ringing in both ears. He filed a claim for hearing loss on October 2, 1993 but did not receive benefits. In an April 13, 1993 statement, appellant noted that he was exposed to noise from high speed drills, sanders, rivet guns and air driven tools for nine hours a day.

Appellant submitted employing establishment audiograms from June 15, 1965 to October 5, 1992 which revealed a mild bilateral high frequency loss when he was hired in 1965 and which deteriorated with permanent threshold shifts in 1981 and 1992. He submitted employing establishment medical records from September 6, 1988 to November 18, 1992 which noted treatment for right ear trauma after a minor explosion at work which did not result in permanent injury. In a September 7, 1989 report, Dr. Robert L. Mellor, a Board-certified otolaryngologist, noted that a September 15, 1988 audiogram revealed moderately severe sensorineural hearing loss and tinnitus. A November 24, 1992 report from an audiologist advised that appellant's initial audiogram in 1965 revealed mild high frequency loss in both ears with permanent threshold shifts in 1981 and 1992. A December 15, 2008 audiogram performed by Garr J. Crookston, an audiologist, revealed normal hearing thresholds in the low and mid frequencies with a sharp drop in thresholds due to a severe hearing loss in the high frequencies. Dr. Crookston recommended hearing aids.

A June 23, 2009 statement of accepted facts noted that appellant worked as a sheet metal mechanic from August 14, 1988 to April 19, 2003 and as a plastic fabricator supervisor from April 20, 2003 to September 30, 2007. Appellant was exposed to noise from high speed drills, sanders, drill presses, rivet guns, metal cutting band saws and air driven tools in both positions. He was exposed to occupational noise levels above 85 decibels from August 1988 to September 2007.

By letter dated June 24, 2009, the Office referred appellant with a statement of accepted facts to Dr. Ronald F. Gordon, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. In a July 14, 2009 report, Dr. Gordon set forth findings on examination and opined that when appellant's employment began, he had a mild bilateral high frequency loss. Appellant's current audiometric findings showed sensorineural loss in excess of what would be expected from presbycusis. Dr. Gordon diagnosed noise-induced sensorineural hearing loss which was due to the noise exposure encountered in his job. He performed otologic

[1] Appellant submitted document from a previous hearing loss claim. On August 11, 1998 he claimed a hearing loss which was developed in claim number xxxxxx361. The Office accepted the claim for acute acoustic trauma of the right ear and traumatic tinnitus. On August 8, 1989 it denied appellant's claim for compensation finding that his hearing loss was not related to the September 1988 injury. Claim number xxxxxx361 is not before the Board on the present appeal.

evaluation of appellant on July 14, 2009 and audiometric testing was conducted that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 10, 15, 15 and 45 decibels; left ear 10, 15, 10 and 40 decibels. Dr. Gordon noted tympanometry revealed normal tracings bilaterally and the audiogram revealed noise-induced sensorineural hearing loss and recommended bilateral hearing aids.

On July 20, 2009 an Office medical adviser reviewed Dr. Gordon's report and the audiometric test of July 14, 2009. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (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 current standards for evaluating hearing loss to the results of the July 14, 2009 audiogram.

On July 24, 2009 the Office accepted appellant's claim for bilateral hearing loss due to noise exposure and authorized hearing aids.

In a July 27, 2009 decision, the Office denied appellant's claim for a schedule award, finding that the extent of hearing loss was not severe enough to be ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] 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.[5]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[6] Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.[7] Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no

[2] A.M.A., *Guides* (6th ed. 2008).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id. See also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[6] A.M.A., *Guides* 250 (6th ed. 2008). The sixth edition of the A.M.A., *Guides* became applicable as of May 1, 2009.

[7] *Id.*

impairment in the ability to hear everyday speech under everyday conditions.[8] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[9] 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.[10] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[11]

ANALYSIS

The Office referred appellant to Dr. Gordon to evaluate his hearing loss. An Office medical adviser agreed with Dr. Gordon's findings and conclusion that appellant's hearing loss was aggravated by his employment. The medical adviser applied the Office's standardized procedures to the July 14, 2009 audiogram performed for Dr. Gordon 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 10, 15, 15, and 45, respectively. These decibels were totaled at 85 and were divided by 4 to obtain an average hearing loss at those cycles of 21.25 decibels. The average of 21.25 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 10, 15, 10 and 40 respectively. These decibels were totaled at 75 and were divided by 4 to obtain the 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 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. Gordon's report and the July 14, 2009 audiogram. The result is a nonratable binaural hearing loss. Although the record contains other audiograms submitted by appellant, these are of no probative value as they were not certified by any physician as accurate.[12]

On appeal appellant asserts that he should have been granted a schedule award because the Office accepted his condition for bilateral hearing loss and authorized hearing aids. As noted appellant has an accepted bilateral hearing loss; but the extent of such loss is not ratable under the standards used by the Office to determine permanent impairment for schedule award purposes.

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[8] *Id.*

[9] *Id.*

[10] *Id.*

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

[12] *See Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss). *See also James A. England*, 47 ECAB 115, 118 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; the Office need not review uncertified audiograms).

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 July 27, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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