United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 09-2211**
	)	**Issued: May 6, 2010**
DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, NAVAL AIR DEPOT, Cherry Point, NC, Employer	)	

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 2, 2009 appellant filed a timely appeal from an April 4, 2009 merit decision of the Office of Workers' Compensation Programs granting him a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of his claim.

ISSUE

The issue is whether appellant established that he sustained greater than 24 percent left ear sensorineural hearing impairment.

FACTUAL HISTORY

On September 19, 2008 appellant, a 73-year-old retired production controller,[1] filed an occupational disease claim (Form CA-2) for left ear hearing loss. He first became aware of his hearing loss and that it was caused by his federal employment on January 30, 1977.

Appellant submitted results from audiograms conducted between 1969 and April 26, 1993. The district medical adviser reviewed these audiograms and, on October 3, 2008, opined that, while the earliest audiograms demonstrated normal hearing bilaterally, the April 26, 1993 audiogram showed appellant's hearing was normal in his right ear but his left ear demonstrated moderate to severe high frequency hearing loss.

The Office referred appellant, together with a statement of accepted facts, for examination by Dr. Charles Beasley, a Board-certified otolaryngologist.

On February 12, 2009 Dr. Beasley reported findings on examination and diagnosed employment-related bilateral sensorineural hearing loss. An audiogram performed February 10, 2009 reflected testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed hearing losses in appellant's right ear of 20, 15, 30 and 30 respectively and 25, 20, 55 and 65 on the left.

The district medical adviser reviewed Dr. Beasley's February 10, 2009 audiogram and diagnosed bilateral sensorineural hearing loss with left monaural hearing loss which he assigned a 24 percent impairment rating. He opined that appellant's date of maximum improvement was February 10, 2009, the date of Dr. Beasley's audiogram.

By decision dated March 4, 2009, the Office accepted appellant's claim for binaural sensorineural hearing loss. It also found that appellant was entitled to a schedule award for his 24 percent left ear monaural hearing loss impairment.

On March 23, 2008 appellant filed a schedule award claim.

By decision dated April 30, 2009, the Office granted appellant a schedule award for 24 percent left ear sensorineural hearing loss. It paid 12.48 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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,

[1] The record reflects appellant retired in 1993.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

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*[4] 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 Hz, the losses at each frequency are added up and averaged.[7] 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.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The Board has defined "maximum medical improvement" as meaning that the physical condition of the injured member of the body has stabilized and will not improve further.[10] The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by the Office.[11]

ANALYSIS

On appeal, appellant disputes the Office's findings and argues that 12.48 weeks of compensation was improper. His burden is to demonstrate he sustained more than the 24 percent left ear hearing impairment for which he received a schedule award. This is a medical issue that can only be proven through probative rationalized medical opinion evidence. The Board has carefully reviewed the evidence of record and finds appellant has not established he sustained more than the 24 percent impairment such that would entitle him to additional compensation.

The Office medical adviser applied the Office's standardized procedures to Dr. Beasley's February 10, 2009 audiogram. 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 appellant's right

[4] A.M.A., *Guides* (5th ed. 2008).

[5] 20 C.F.R. § 10.404.

[6] Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.0700.4.b (January 2010).

[7] *Id.*

[8] *Id.*

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

[10] *J.C.*, 58 ECAB 258 (2007); *James E. Earle*, 51 ECAB 567 (2000).

[11] *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

ear of 20, 15, 30 and 30 respectively. These totaled 95 decibels which, when divided by 4, produced an average hearing loss of 23.75. The average of 23.75 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5, produced a 0 percent hearing loss in appellant's right ear.

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 25, 20, 55 and 65. These totaled 165 which when divided by 4, produced an average hearing loss of 41.25 decibels. The average hearing loss of 41.25 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above) equals 16.25 which, when multiplied by the established factor of 1.5 produced a 24.38 percent hearing loss in appellant's left ear. The Office rounded to 24 percent for purposes of his schedule award.

The Act provides 52 weeks' compensation for complete loss of hearing in one ear.[12] Here, the Office found, based upon the reports and opinions of Dr. Beasley and the district medical adviser, that appellant sustained only a 24 percent permanent left ear sensorineural hearing loss. Applying the Act's compensation schedule reveals the appropriate compensation period is 12.48 weeks.[13]

The Office properly determined that appellant's schedule award should begin on the date of maximum medical improvement, February 10, 2009, as determined by Dr. Beasley and the district medical adviser because their reports are the only relevant competent medical evidence of record. Although appellant submitted reports containing results from historical audiograms, including the April 26, 1993 audiogram, as well as other evidence demonstrating the presence of varying degrees of hearing loss, 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.[14] The Board has held that if an audiogram is prepared by an audiologist its accuracy must be certified by a physician before it can be used to determine the percentage of hearing loss.[15] It is appellant's burden to submit a properly prepared and certified audiogram to the Office.[16] 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 and, therefore, is insufficient to satisfy appellant's burden of proof.

The Board finds appellant has not established greater than a 24 percent left ear sensorineural hearing impairment for which he has received a schedule award beginning on the appropriate date of maximum medical improvement and for the appropriate number of weeks.

[12] 5 U.S.C. § 8107(c)(13)(A).

[13] $52 \times 0.24 = \underline{12.48}$

[14] *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

[15] *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

[16] *Id.*

CONCLUSION

The Board finds appellant has not established greater than a 24 percent left ear sensorineural hearing impairment for which he has received a schedule award beginning on the appropriate date of maximum medical improvement and for the appropriate number of weeks.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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