United States Department of Labor
Employees' Compensation Appeals Board

E.K., Appellant	)	
and	)	**Docket No. 10-761**
	)	**Issued: October 19, 2010**
DEPARTMENT OF THE AIR FORCE, 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:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2010 appellant filed a timely appeal of the November 20, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUES

The issues are: (1) whether appellant established that he sustained a ratable hearing loss; and (2) whether appellant established that the Office abused its discretion in denying his request for hearing aids.

On appeal appellant contends that he was exposed to hazardous noise environment for over 30 years that he was told by doctors he had a hearing problem and that he cannot get a hearing aid because the Office told him that his hearing loss was not ratable.

FACTUAL HISTORY

On March 6, 2008 appellant, then a 56-year-old quality assurance specialist, filed an occupational disease claim alleging that he sustained a hearing loss as a result of the duties of his

federal employment. He noted that prior to working as a quality assurance specialist he worked 27 years as an aircraft mechanic and that during his employment he was exposed to noise. In response to the Office's query, appellant gave a detailed accounting of his work positions at the employing establishment and noted that he was exposed to numerous sources of noises, including rivet guns, drills, nut runners, torque wrenches, blow guns, blowers and hydraulic mules. He also submitted a letter dated August 25, 2008 wherein Cristi Liston, Chief of Aircraft Quality Assurance for the employing establishment, noted that appellant was exposed to a multitude of noise hazards from July 1977 to 2004. Appellant also submitted a supervisor's statement indicating that he had been exposed to noise from running aircraft engines, manufacturing machinery, point blasting equipment, cabin pressure testing equipment and aircraft aerospace ground equipment during the period May 2004 through May 2008. He retired on May 31, 2008.

Appellant submitted the results of audiograms that were conducted by the employing establishment. In a July 29, 2008 report, Lt. Col. Carolyn S. Bennett, a clinically certified audiologist working for the employing establishment, noted that comparing appellant's initial audiograms when he began his federal employment with an audiogram conducted in 2008 that was requested by appellant prior to his retirement, he had a very mild hearing loss which was consistent with presbycusis.

By letter dated February 9, 2009, the Office referred appellant and a statement of accepted facts to Dr. Ronald F. Gordon, a Board-certified otolaryngologist, for an audiological examination. In a March 10, 2009 report, Dr. Gordon diagnosed appellant with sensorineural hearing loss. He indicated that audiometric testing conducted on that date at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 20, 20, 20 and 20 decibels (air) and left ear 5, 5, 5 and 10 decibels (air). Dr. Gordon also recommended a magnetic resonance imaging (MRI) scan to rule out right acoustic neuroma because of the asymmetry of appellant's hearing loss.

The Office referred appellant for an MRI scan on March 13, 2009. In a report dated March 18, 2009, Dr. Kenneth J. Nowers, a Board-certified radiologist, interpreted the MRI scan of that date as evincing normal appearance of brain parenchyma and internal auditory canals and mild-to-moderate chronic mucosal thickening in the paranal sinuses. In a March 23, 2009 note, Dr. Gordon reviewed the MRI scan and indicated that it did not show an acoustic neuroma. He noted documented progressive hearing loss and stated that appellant was borderline for a hearing aid.

On April 10, 2009 the Office referred appellant to the Office medical adviser for a determination of appellant's hearing impairment. In an April 14, 2009 report, the Office medical adviser indicated that appellant had binaural work-related sensorineural hearing loss and that his date of maximum medical improvement was March 10, 2009. He noted that the closest audiogram for appellant's last known workplace noise exposure was the test conducted on behalf of the second opinion physician on March 10, 2009. He determined that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008), appellant showed no ratable impairment in either his left or right ear. The Office medical adviser also opined that hearing aids were not needed at this time in either ear as he did not feel the instruments would be able to improve appellant's speech discrimination.

On May 18, 2009 the Office accepted appellant's claim for noise-induced hearing loss but found that appellant was not entitled to a schedule award as appellant's hearing loss was not severe enough to be considered ratable. The Office also denied appellant's request for hearing aids as it found that the weight of the medical evidence established that appellant would not benefit from hearing aids.

On June 6, 2009 appellant requested an oral hearing. At the hearing held on September 17, 2009 he testified that he was told when he was hired that he had exceptional hearing but subsequently the employing establishment readjusted his hearing threshold and that subsequently doctors have told him he has sustained significant hearing loss. Appellant retired in May 2008. He described noise exposure from jet engines, pneumatic tools, blowers and rivet guns. Appellant did note that he was given hearing protection. He alleged that he needs hearing aids.

In a decision dated November 20, 2009, the hearing representative affirmed the May 18, 2009 decision.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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.[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[4] 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.[5] 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.[6] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[7] The

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

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

[4] A.M.A., *Guides* 250-51 (6th ed. 2008). The sixth edition of the A.M.A., *Guides* became applicable as of May 1, 2009.

[5] *Id.*

[6] *Id.*

[7] *Id.*

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.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

ANALYSIS -- ISSUE 1

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 sustained sensorineural hearing loss due to his federal employment. The medical adviser applied the Office's standardized procedures to the March 10, 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 decibel losses of 20, 20, 20 and 20, respectively. These decibels were totaled at 80 and were divided by 4 to obtain an average hearing loss at those cycles of 20 decibels. The average of 20 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss in 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 decibel losses of 5, 5, 5 and 10, respectively. These decibels were totaled at 25.0 decibels and were divided by 4 to obtain the average hearing loss of 6.25 decibels. The average of 6.25 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. Gordon's report and the March 10, 2009 audiogram. The result is a nonratable 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.[10]

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

[8] *Id.*

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

[10] *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).

monthly compensation.[11] 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.[12]

ANALYSIS -- ISSUE 2

Appellant alleges that he was found not to be entitled to hearing aids because the Office found that he had no ratable hearing loss. In fact, the Office denied appellant's request for hearing aids because it found that the medical evidence did not establish that they were necessary. The Board also finds that the record does not support that hearing aids are necessary to treat appellant's hearing loss. Dr. Gordon indicated that appellant was border line for wearing a hearing aid. The Office medical adviser stated that he did not believe hearing aids were needed at this time in either ear as he did not feel that these instruments would be able to improve speech discrimination. 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 that appellant has not established that he sustained a ratable hearing loss in the performance of duty. The Board further finds that appellant has not established that the Office abused its discretion in denying his request for hearing aids.

[11] 5 U.S.C. § 8103(a).

[12] *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).

ORDER

IT IS HEREBY ORDERED THAT decision of the Office of Workers' Compensation Programs dated November 20, 2009 is affirmed.

Issued: October 19, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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