

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

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F.D., Appellant )

and )

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVAL SHIPYARD, NAVAL FOUNDRY &  
PROPELLER CENTER, Philadelphia, PA,  
Employer**

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**Docket No. 10-1175  
Issued: January 4, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 24, 2010 appellant filed a timely appeal from a January 28, 2010 Office of Workers' Compensation Programs schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he had a ratable hearing loss entitling him to a schedule award; and (2) whether he is entitled to hearing aids.

On appeal, appellant contends that hearing aids are necessitated by his impaired hearing.

**FACTUAL HISTORY**

On July 9, 2009 appellant, then a 61-year-old structural ship fitter, filed an occupational disease claim (Form CA-2) alleging that he sustained a loss of hearing in 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 June 22, 2009. On June 25, 2009 appellant was treated at Branch Medical Clinic.

On July 13, 2009 the Office requested additional factual and medical evidence. Subsequently, appellant submitted evidence demonstrating that he was employed as a corrosion control specialist in the United States Air Force from 1967 to 1974, at the employing establishment from 1980 to 2009 and that he was exposed to noise from various sources during that period. He also submitted audiometric test results through the employer's hearing conservation program for the period 1985 to 2009.

On September 25, 2009 the Office referred appellant, together with a statement of accepted facts, to Dr. Emil P. Liebman, a Board-certified otolaryngologist, for a second opinion examination.

In a November 20, 2009 report, Dr. Liebman noted that an October 20, 2009 baseline audiogram revealed a bilateral high frequency sensorineural hearing loss. He reviewed the audiometric tests dating back to 1985, when appellant's hearing was normal at all frequencies. A November 20, 2009 audiogram performed on his behalf showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 10, 15, 15 and 20 for the right ear and 10, 10, 20 and 30 for the left ear. Dr. Liebman reported that appellant's hearing loss was "greater than it would be predicted with a presbycusis hearing loss alone" and concluded that the noise to which appellant was exposed in the workplace was sufficient to cause his hearing loss. He reported appellant's "percent of hearing loss according to the formula derived by the American Medical Association is zero percent right ear, zero percent left ear, binaurally zero percent."

On December 4, 2009 an Office medical adviser reviewed Dr. Liebman's November 20, 2009 report. Dr. Liebman applied the Office's standard for evaluating hearing loss to the audiograms and determined that appellant had a zero percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear. The medical adviser agreed that appellant had a nonratable binaural hearing loss. The medical adviser further opined that hearing aids and a specialist evaluation should not be authorized.

On January 4, 2010 the Office accepted appellant's claim for binaural hearing loss.

By decision dated January 28, 2010, the Office denied appellant's schedule award claim and hearing aids, finding that his hearing loss was not severe enough to be considered ratable. It explained that the weight of the evidence established that he would not benefit from hearing aids and also denied additional medical benefits.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act (the Act)<sup>1</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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 Permanent Impairment* (sixth edition 2009), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

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 cycles a second, 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.<sup>3</sup>

### ANALYSIS

In order to determine the extent and degree of appellant's loss of hearing, the Office referred him to Dr. Liebman. On November 20, 2009 Dr. Liebman reviewed audiometric testing conducted at his request and opined that noise exposure in appellant's workplace was sufficient to cause hearing loss in both ears.

An Office medical adviser applied the Office's standard procedures to the November 20, 2009 audiogram. It tested decibel losses at 500, 1,000, 2,000 and 3,000 cycles per seconds and recorded decibel losses of 10, 15, 15 and 20 respectively in the right ear. The total decibel loss in the right ear is 60 decibels. When divided by 4, the result is an average hearing loss of 15 decibels. The average loss of 15 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 right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cycles a second and recorded decibel losses of 10, 10, 20 and 30 respectively for a total decibel loss of 70 decibels. When divided by 4, the result is an average hearing loss of 17.5 decibels. The average loss of 17.5 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 Board finds that the Office medical adviser properly applied the standards to the findings of the November 20, 2009 audiogram and concluded that appellant did not have a ratable hearing loss for schedule award purposes.<sup>4</sup>

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<sup>2</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>4</sup> *J.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1735, issued January 27, 2009).

On appeal, appellant disputes the Office's denial of his request for hearing aids. The Board notes that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits, such as a hearing aid, may still be payable if any causally related hearing loss exists.<sup>5</sup> Dr. Liebman's report indicated that the noise at appellant's workplace was sufficient to cause his hearing loss. He did not address the issue of whether or not appellant would benefit from hearing aids. The Office medical adviser noted that hearing aids should not be authorized, but did not provide any reasoning or explanation for the decision. The decision denying hearing aids provided no findings for why hearing aids were not authorized. Therefore, the record is unclear regarding the reason why the Office declined to authorize hearing aids.

The Board notes that proceedings under the Act are not adversarial in nature. The Office shares in the responsibility to develop the evidence and has an obligation to see that justice is done.<sup>6</sup> Accordingly, the case will be remanded to the Office for further development on the question of whether appellant should be authorized hearing aids. Following this and such other development as is deemed necessary, the Office shall issue an appropriate merit decision.

### CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes. The Board finds that the case requires further development on the question of whether hearing aids should be authorized.

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<sup>5</sup> *Id.* See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (September 1995); *Raymond VanNett*, 44 ECAB 480 (1993).

<sup>6</sup> *Lyle Dayberry*, 49 ECAB 369 (1998). See also *VanNett*, *id.* at 483 (where the Office began to develop appellant's hearing loss claim but did not complete such development, the case was remanded for further evidentiary development).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside and remanded in part.

Issued: January 4, 2011  
Washington, DC

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

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

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