United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 10-1512**
	)	**Issued: March 24, 2011**
DEPARTMENT OF THE NAVY,	)	
Mare Island, CA, 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 May 13, 2010 appellant filed a timely appeal from the January 21, 2010 schedule award 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.

ISSUE

The issue is whether appellant has more than a two percent monaural hearing loss of the right ear for which he received a schedule award.

FACTUAL HISTORY

On August 9, 1985 appellant, then a 43-year-old pipefitter, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. He became aware of his hearing loss and realized it was related to his employment in 1973. Appellant retired on March 31, 1996.

On December 24, 1985 the Office referred appellant to Dr. Sheldon S. Kabaker, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In an

April 3, 1986 report, Dr. Kabaker examined appellant and reviewed his exposure to noise generated from heavy construction while working as a pipefitter, inspector and progressman. Appellant reported using earplugs for hearing protection. Dr. Kabaker diagnosed bilateral sensorineural hearing loss that was due to workplace noise exposure. He advised that appellant would not benefit from amplification. On May 6, 1986 an Office medical adviser reviewed Dr. Kabaker's report and the audiometric test of March 24, 1986. He concluded that appellant's hearing loss was not severe enough to be ratable for a schedule award. On May 27, 1986 the Office accepted appellant's claim for bilateral sensorineural hearing loss due to noise exposure. It found that, although appellant's hearing loss was employment related, it was not ratable for purposes of a schedule award.

On July 22, 2007 appellant filed a claim for a schedule award. He submitted an August 29, 2007 audiogram from Christina Barboa, an audiologist, which revealed slight to severe sensorineural hearing loss bilaterally, worse in the right ear. Ms. Barboa recommended amplification binaurally. In an attending physician's report, she diagnosed noise-induced hearing loss and noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. Ms. Barboa recommended bilateral hearing aids.

A July 9, 2008 statement of accepted facts noted that from 1961 to 1973 appellant worked as a marine pipefitter helper, marine pipefitter, piping and mechanical inspector, nuclear radiology technician and marine pipefitter supervisor at Hunters Point Naval Shipyard. From 1973 to 1990 he worked as a nuclear marine pipefitter, piping planner estimator, contractor inspector, nuclear piping inspector, marine progressman and marine pipefitter supervisor at Mare Island Shipyard. From 1990 to 1996 appellant worked for the Navy Public Works as a public works planner and environmental planner. It is accepted that he was exposed to occupational noise levels above 85 decibels.

On July 10, 2008 the Office referred appellant to Dr. David Keiner, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In an August 6, 2008 report, Dr. Keiner noted examining appellant and reviewed his exposure to noise from machinery while working as a pipefitter. Appellant reported using earplugs in the 1970's and retiring in 1996. He reported some occasionally high-pitched tinnitus. Dr. Keiner diagnosed bilateral neurosensory hearing loss, mild to severe in the right ear and mild to moderate in the left ear. He noted tympanic membranes were normal, no evidence of perforation, middle ear effusion or infection and nasal examination showed a clear airway, normal mucosa and the pharynx and neck were normal. Dr. Keiner performed an otologic evaluation of appellant on July 29, 2008 and audiometric testing was conducted on his behalf. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 25, 30 and 80 decibels; left ear 15, 25, 40 and 70 decibels. Dr. Keiner opined that appellant's hearing loss was related to his noise exposure at work as he had normal hearing at the time of employment in 1961. He stated that it was unlikely that any significant additional hearing loss occurred after appellant stopped work in 1996 and that any additional hearing loss from 1996 to the present was due to natural aging. Dr. Keiner recommended hearing aids.

On September 25, 2008 an Office medical consultant, Dr. Brian E. Schindler, a Board-certified otolaryngologist, reviewed the medical record. He noted that appellant was exposed to hazardous noise while working at the employing establishment from 1961 to 1996 as a marine

pipefitter, inspector and planner. Dr. Schindler did not find a summary of noise exposures and the earliest enclosed audiograms were from 2007 which showed bilateral high frequency hearing loss at that time. He requested all prior audiograms so he could evaluate appellant's hearing loss at the time he retired in 1996. The employing establishment subsequently provided audiograms dated March 7, 1961 to February 20, 1996.

On February 6, 2009 Dr. Schindler reviewed the medical record and found that appellant's bilateral high frequency neurosensory hearing loss was consistent with his history of noise exposure. The earliest audiogram of record was dated March 7, 1961 which showed a bilateral high frequency hearing loss at that time and subsequent audiograms showed deterioration in the hearing level over the years. For schedule award purposes, Dr. Schindler used the audiogram of February 20, 1996 which showed bilateral high frequency hearing loss. This February 20, 1996 audiogram was obtained within a year of the time that appellant retired and represented an accurate reflection of his hearing loss at the time he retired. Dr. Schindler used this audiogram to calculate hearing loss caused by exposure to federal noise exposure, as such noise exposure ceased after appellant retired in 1996. The February 20, 1996 audiogram revealed testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following: right ear 10, 10, 10 and 75 decibels; left ear 10, 15, 10 and 60 decibels. The medical consultant noted his calculations in a February 4, 2009 worksheet in which he concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*), appellant had a 1.9 percent (rounded up to two percent) monaural hearing loss in the right ear and a zero percent monaural hearing loss in the left ear. He recommended a hearing aid for the right ear.

In a decision dated March 9, 2009, the Office granted appellant a schedule award for a two percent monaural hearing loss for the right ear. The period of the award was from March 31 to April 7, 1996.

On July 9, 2009 appellant requested reconsideration. He also requested bilateral hearing aids as recommended by Dr. Barboa and Dr. Keiner.

In an October 13, 2009 decision, the Office denied modification of the March 9, 2009 schedule award.

On October 13, 2009 appellant requested reconsideration. He submitted a September 18, 2009 audiogram from Loveleen Sandhu, an audiologist, who noted that audiological testing revealed hearing within normal limits at 250 to 2,000 cycles per second and precipitously sloping to severe and moderately severe, high frequency, sensorineural hearing loss bilaterally. Ms. Sandhu noted that compared to the 2007 audiogram, the left ear thresholds had dropped significantly and now showed symmetrical loss to the right ear thresholds. Bone conduction testing shows this to be permanent, sensorineural hearing loss in both ears. Ms. Sandhu recommended amplification to both ears considering appellant's progressive loss.

On November 4, 2009 Dr. Schindler noted that appellant retired in 1996. He again stated that the audiogram of February 20, 1996 was closest in time to when appellant retired and revealed a ratable hearing loss of two percent. On the basis of the audiogram, Dr. Schindler recommended a hearing aid for the right ear. As to whether a hearing aid for the left ear was

related to the 1985 work-related injury, he noted that appellant had deterioration of hearing in both ears due to aging. At the time of his retirement, appellant's left ear hearing loss was not sufficient to recommend a hearing aid.

In a decision dated January 21, 2010, the Office denied modification of the October 13, 2009 decision.

LEGAL PRECEDENT

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 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]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

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

[4] A.M.A., *Guides* 250 (6th ed. 2008).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[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).

ANALYSIS

In rating the extent of noise-induced hearing loss due to occupational exposure, Dr. Schindler reviewed an audiogram dated February 20, 1996 obtained by the employing establishment prior to appellant's retirement on March 30, 1996. He advised that of the audiograms of record, it was the best representation of the extent of loss due to appellant's noise exposure in his federal employment.

While noise-induced hearing loss may not typically progress after exposure to noise ceases, an Office medical adviser or consultant will provide a well-rationalized opinion for selecting one audiogram over another.[10] The Board finds that Dr. Schindler provided rationale for selecting the February 20, 1996 audiogram over other available audiograms.

Dr. Schindler selected the audiogram of February 20, 1996 to determine appellant's employment-related hearing loss because it was the most complete audiogram that was contemporaneous with appellant's retirement on March 31, 1996. He noted that the February 20, 1996 audiogram was obtained at the time appellant retired and was an accurate reflection of his employment-related hearing loss. The medical consultant explained that he used this audiogram to calculate the percent of hearing loss caused by exposure to workplace noise exposure, as appellant's noise exposure ceased after he retired. He explained that appellant's hearing loss since retirement was not the result of noise exposure in his federal employment. The Board finds that Dr. Schindler provided sound medical reasoning for selecting the February 20, 1996 audiogram as representing appellant's employment-related hearing loss. It was a complete audiogram performed about a month prior to retirement. Dr. Schindler noted that the earliest audiogram in the record was dated March 7, 1961 which showed a bilateral high frequency hearing loss at that time and that the subsequent audiograms showed deterioration in appellant's hearing over the years. He addressed the reliability of the February 20, 1996 audiogram noting that it was a complete audiogram, that it included pure tone air and bone conduction scores and speech testing and that it was performed on a calibrated machine.[11]

An Office medical consultant applied the Office's standardized procedures to the February 20, 1996 audiogram performed for the employing establishment. 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, 10, 10 and 75 respectively. These decibels were totaled at 105 and were divided by 4 to obtain an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.9

[10] *See John C. Messick*, 25 ECAB 333 (1974) (holding that when several audiograms are in the case record and all are made within approximately two years of one another and are submitted by more than one physician, the Office should give an explanation for selecting one audiogram over the others).

[11] *See Marco A. Padilla*, 51 ECAB 202 (1999) (where the Office medical adviser provided sufficient rationale for selecting an audiogram on the grounds that it was more representative of appellant's employment-related hearing loss than were those submitted prior to retirement and those that were incomplete and undated).

percent monaural loss of hearing for the right ear. This was rounded to two percent.[12] 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 60 respectively. These decibels were totaled at 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero, which was multiplied by the established factor of 1.5 to compute a zero percent monaural hearing loss for the left ear.

The Board finds that the weight of medical opinion establishes two percent loss of hearing in appellant's right ear based on the reports of Dr. Schindler.

Appellant asserted that the extent of his hearing loss was greater and that he be granted two hearing aids. He submitted records from audiologists. The Board has held that reports by an audiologist, not certified by a physician, cannot be considered as probative medical evidence.[13] The audiograms submitted by appellant dated August 29, 2007 and September 18, 2009 are of no probative value as they were not certified by a physician as accurate.[14]

As noted above, Dr. Schindler selected the audiogram of February 20, 1996 to determine appellant's employment-related hearing loss as to hearing aids, Dr. Schindler again relied on the February 20, 1996 audiogram. He explained that appellant's hearing loss since retirement was not the result of noise exposure in federal employment. Dr. Schindler recommended a hearing aid for the right ear and noted that appellant had continued deterioration in the hearing in both ears due to aging. He opined that the hearing loss in appellant's left ear at the time of his retirement was not sufficient to recommend a hearing aid. Dr. Keiner, while recommending hearing aids, did not provide any explanation as to why the left ear hearing aid would be needed due to workplace noise exposure.

CONCLUSION

The Board finds that the Office properly determined that appellant sustained a two percent monaural hearing loss.

[12] The policy of the Office is to round the calculated percentage of impairment to the nearest whole number. *J.P.*, Docket No. 08-832 (issued November 13, 2008).

[13] Medical opinion, in general, can only be given by a qualified physician. *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 5 U.S.C. § 8101(2) (defines the term physician).

[14] *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).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2011
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