

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

W.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 10-2063
Issued: May 10, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 2, 2010 appellant filed a timely appeal from a July 14, 2010 Office of Workers' Compensation Programs' schedule award decision. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On January 12, 2010 appellant, then a 63-year-old custodian, filed an occupational disease claim alleging that he sustained a loss of hearing in his left ear due to exposure to loud

¹ 5 U.S.C. § 8101 *et seq.*

noise at work. He first became aware of his hearing loss on October 22, 2009 and related it to his employment on November 18, 2009.

Appellant provided his employment history and the noise exposure for each job. From July 1979 to June 1988, he worked as a tank mechanic where he spent many hours in a noisy motor pool, with hearing protection. From June 1988 to August 1995, appellant was a military policeman in the U.S. Army where he was exposed to gun fire for about eight hours a day, three to four times a year, and wore hearing protection. From October 1995 to September 1996, he worked as a delivery man in a lumbar yard and was exposed to noise from delivery trucks more than four hours, five days a week, without any hearing protection. From September 1996 until the present, appellant worked at the postal service as a mail handler, clerk, and custodian where he was exposed to noise from an overhead carousel, bundle sorter, and numerous machines more than four hours a day, five days a week and wore hearing protection.

In a December 16, 2009 report, Paul E. Ashbrook, an audiologist, stated that appellant underwent a hearing evaluation. The audiogram revealed that appellant sustained moderate to mild reverse slope sensorineural hearing loss in his left ear and mild flat sensorineural hearing loss in his right ear. Mr. Ashbrook recommended hearing aids. He attached a December 15, 2009 audiogram, but the results were ineligible.

In a February 8, 2010 report, Mr. Ashbrook confirmed that appellant was seen in his office on December 15, 2009. He repeated the findings made in his December 16, 2009 report and added that appellant had been fitted for hearing aids at the Veterans Administration Hospital, which were paid for by the Veterans Administration.

On May 21, 2010 the Office referred appellant, together with a statement of accepted facts, to Dr. Douglas Holmes, a Board-certified otolaryngologist, for a second opinion examination.

In a June 28, 2010 report, Dr. Holmes diagnosed appellant with mild left sensorineural hearing loss and attributed it to noise exposure at work. A June 28, 2010 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, 20, and 15 for the right ear and 10, 15, 20, and 30 for the left ear. Dr. Holmes determined that appellant suffered from a mild left sensorineural hearing loss in excess of what would be normally predicted with a presbycusis hearing loss alone.

On July 12, 2010 an Office medical adviser reviewed Dr. Holmes' June 28, 2010 report and applied the Office's standard for evaluating hearing loss. He determined that appellant had a zero percent monaural hearing loss in the left ear and zero percent monaural hearing loss in the right ear. The medical adviser stated that appellant had a nonratable binaural hearing loss and did not recommend hearing aids. He also did not recommend an examination by a specialist.

By decision dated July 14, 2010, the Office accepted appellant's claim for binaural hearing loss and denied appellant's schedule award claim, finding that his hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award decision of the Act 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 functions of the body. The Act, however, does not specify the manner in which the percentage of 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.²

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.³

ANALYSIS

The Office has accepted that appellant sustained bilateral hearing loss causally related to his federal employment. Appellant submitted an illegible audiogram dated December 15, 2009 to the record from Mr. Ashbrook. In order to determine whether appellant was entitled to a schedule award for his hearing loss, the Office referred appellant to Dr. Holmes. On June 28, 2010 Dr. Holmes examined appellant and reviewed an audiogram conducted on his behalf. He diagnosed appellant with mild left sensorineural hearing loss and opined that the hearing loss resulted from noise exposure at appellant's work.

An Office medical adviser applied the Office's standard procedures to the July 28, 2010 audiogram. The audiogram recorded decibel losses at 500, 1,000, 2,000, and 3,000 cycles per seconds and recorded decibel losses of 10, 15, 20, and 15 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, 15, 20, and 30 respectively for a total

² *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

³ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

decibel loss of 75 decibels.⁴ When divided by 4, the result is an average of 18.75 decibels. The average loss of 18.75 decibels is reduced by the fence of 25 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 July 28, 2010 audiogram and concluded that appellant did not have a ratable hearing loss for schedule award purposes.

On appeal, appellant alleges that he does have severe hearing loss because he has been fitted with hearing aids. While the Office has accepted that he has an employment-related hearing loss, as explained the degree of hearing loss is not severe enough to grant a schedule award. The Board also notes that, while appellant has been fitted with hearing aids, the record indicates that the hearing aids were fitted at a Veterans Administration Hospital and paid for by the Veterans Administration.⁵

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes.

⁴ The medical adviser incorrectly noted a sum of 70 decibels. His analysis, however, was still correct in concluding that appellant had zero percent impairment of the left ear. Thus, this was harmless error.

⁵ The Office has not issued a final decision regarding appellant's entitlement to hearing aids

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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