United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 11-858**
	)	**Issued: October 17, 2011**
DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND STATIONS, Cherry Point, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2011 appellant filed a timely appeal from a November 24, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than three percent bilateral hearing loss for which he received a schedule award.

On appeal, appellant contends the period of the schedule award was erroneously selected.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 31, 2009 appellant, then a 56-year-old supervisor quality assurance specialist, filed an occupational disease claim alleging that he sustained bilateral hearing loss as a result of employment-related noise exposure. He first became aware of his hearing loss on May 12, 2003.

On January 11, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested that he submit additional information. It also requested additional information from the employing establishment regarding his occupational noise exposure.

Appellant described his work-related noise exposure that allegedly caused his hearing loss. His positions at the employing establishment since 1980 included electrical worker; aircraft electrical mechanic and quality assurance specialist. Appellant alleged that he was exposed to hazardous noise from aircraft jet engines, rivet guns and pneumatic tools in all of these positions for approximately 40 hours per week.

The employing establishment concurred with appellant's allegations, stating that he had worked in an office environment for approximately the past eight years, but prior to that, he worked in a production environment where he was subjected to hazardous aircraft noise.

Appellant submitted July 9, 2008 and May 2009 audiograms. The audiograms did not report specific numeric decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz). In a report dated April 7, 2010, the district medical adviser (DMA) stated that the July 9, 2008 and May 2009 audiograms showed moderate to severe high-frequency hearing loss consistent with noise-induced hearing loss. He opined, however, that the audiograms could not be used to document a worsening in appellant's hearing due to the limited period covered by the reports.

On April 14, 2010 OWCP requested additional information from the employing establishment, including medical records and reports of audiograms, during the period of appellant's employment. The employing establishment provided reports of audiograms for the period March 12, 1980 through May 27, 2009. A March 12, 1980 audiogram showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz: 0, 0, 10, and 15 decibels for the right ear and 5, 5, 5 and 10 decibels for the left ear. A report of an April 27, 2009 audiogram reflected decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz: 95, 90, 104 and 105 decibels for the right ear and 95, 180, 95 and 105 decibels for the left ear.

In a July 8, 2008 report, Dr. Roger Rath, an employing establishment physician, diagnosed hearing loss and tinnitus. He stated that appellant had mild to moderately severe mid/high frequency bilateral sensorineural hearing loss, which was progressive in nature. On July 9, 2008 Dr. John P. Arrowood, Jr., a Board-certified otolaryngologist, noted that appellant had been exposed to noise in the workplace and diagnosed mild mid-frequency and mild to moderate high-frequency bilateral hearing loss.

OWCP routed the case record to the DMA for his review and an opinion on whether appellant had a work-related hearing loss. On June 4, 2010 the DMA found that results of

appellant's audiograms were consistent with noise-induced hearing loss and that there was a progression of hearing loss during his federal employment. The DMA noted that the earliest audiogram of March 12, 1980 showed normal hearing bilaterally and that, as of May 22, 2009, appellant had developed mild to moderate, mainly high-frequency bilateral hearing loss consistent with noise-induced hearing loss. He opined that appellant's exposure to aircraft and electrical machines during his employment, eight hours a day, five days a week for many years, was responsible for the loss.

OWCP referred appellant to Dr. Charles Beasley, a Board-certified otolaryngologist, for a second opinion examination. In a June 22, 2010 report, Dr. Beasley observed that the earliest provided audiogram demonstrated normal hearing in both ears. An audiogram performed on June 22, 2010 showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz: 20, 25, 35, and 40 decibels for the right ear and 15, 20, 25 and 45 decibels for the left ear. Dr. Beasley compared the audiometric findings with previous audiograms and found progression of hearing loss during appellant's federal employment. He diagnosed bilateral sensorineural hearing loss due to noise exposure in the federal workplace. Dr. Beasley stated that the loss was in excess of what would be normally predicted on the basis of presbycusis and that workplace exposure was sufficient as to intensity and duration to have caused the loss.

On July 19, 2010 OWCP accepted appellant's claim for bilateral hearing loss due to work-related noise exposure. On September 28, 2010 appellant requested a schedule award.

OWCP forwarded the case record to the DMA for review and an opinion as to whether appellant had a ratable permanent impairment due to his accepted hearing loss condition. In an October 14, 2010 report, the DMA concluded that appellant had a three percent binaural hearing loss pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). According to the results of the June 22, 2010 audiogram, decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz were 20, 25, 35, and 40 decibels for the right ear (for a total of 120) and 15, 20, 25 and 45 decibels (for a total of 105). The average loss for the right ear of 30 was then reduced by the fence of 25 to equal 5 decibels. This amount was then multiplied by 1.5 to equal 7.5 monaural decibel loss of the right ear. The left ear loss was averaged to 26.25 decibels, from which the fence of 25 decibels was subtracted to equal 1.25 decibels. This loss was then multiplied by 1.5 to equal 1.875 decibels, as the left monaural loss. To calculate the binaural loss, the lesser loss of 1.875 decibels was multiplied by 5 to equal 9.375 and was then added to the greater loss of 7.5 to total 16.875. This sum was then divided by 6, resulting in the binaural loss of 2.8125, which is rounded to 3 percent. The DMA determined that the date of maximum medical improvement was June 22, 2010, the date of the audiogram on which the report was based.

By decision dated November 24, 2010, OWCP granted appellant a schedule award for three percent binaural hearing loss. The period of the award ran from June 22 through August 2, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA 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. FECA, 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 OWCP. 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 A.M.A., *Guides*, sixth edition 2009, has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.[2]

OWCP 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 Hz, 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 OWCP's adoption of this standard for evaluating hearing loss.[3] The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.[4]

OWCP procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores.[5]

ANALYSIS

In support of his claim for an employment-related hearing loss, appellant submitted audiograms dated July 9, 2008 and May 2009. The employing establishment provided audiograms for the period March 12, 1980 through May 27, 2009. This evidence did not meet OWCP's criteria to establish an employment-related loss of hearing, as the accuracy of the audiograms was not certified by a physician. OWCP does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist.[6]

Due to the lack of appropriate medical evidence, OWCP properly referred appellant for a second opinion examination by Dr. Beasley. After reviewing Dr. Beasley's June 22, 2010

[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).

[4] *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

[5] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(4) (March 2010); *see also J.H.*, 59 ECAB 377 (2008).

[6] *Robert E. Cullison*, 55 ECAB 570 (2004).

audiogram and report, the medical adviser correctly applied OWCP's standardized procedures to the results. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 25, 35 and 40 respectively. These decibel losses were properly totaled at 120 and divided by 4 to obtain the average hearing loss per cycle of 30. The average of 30 was then reduced by the 25 decibel fence to equal 5 decibels for the right ear. The 5 decibel figure was multiplied by the 1.5 resulting in a 7.5 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 20, 25 and 45 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by the 25 decibel fence to equal 1.25 decibels for the left ear. The 1.25 was multiplied by 1.5 resulting in a 1.875 percent loss for the left ear. To calculate the binaural loss, the lesser loss of 1.875 decibels was multiplied by 5 to equal 9.375 and was then added to the greater loss of 7.5 to total 16.875. This sum was then divided by 6, resulting in the binaural loss of 2.8125, which is rounded to 3 percent. The Board finds that the medical adviser applied the proper standards to the June 22, 2010 audiogram and correctly determined that appellant had a three percent binaural hearing loss. Appellant has not established that he has more than the three percent binaural hearing loss, for which he received a schedule award.

On appeal, appellant contends that the period of the schedule award was erroneously selected. His contention is not supported by relevant statute and case law. The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete hearing loss, the maximum number of weeks of compensation is 312 weeks. Since appellant's impairment was three percent, he is entitled to three percent of 312 weeks, or 9.36 weeks of compensation. As to the date of maximum medical improvement, the Board has held that such determination is based on probative medical opinion and is usually considered to be the date of evaluation by an examining physician.[7] The Board has noted a reluctance to find a date of maximum medical improvement that is retroactive to a schedule award, as retroactive awards often result in payment of less compensation benefits.[8] In this case, OWCP's medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Beasley. The award therefore properly ran for 9.36 weeks commencing on June 22, 2010.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant sustained a three percent binaural hearing loss and is not entitled to a greater schedule award than granted.

[7] *See D.R.*, 57 ECAB 720 (2006).

[8] *Id. See James E. Earle*, 51 ECAB 567 (2000).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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