U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST H. WOLF and DEPARTMENT OF THE NAVY, TIRDENT REFIT FACILITY, Silverdale, WA

Docket No. 98-2082; Submitted on the Record;
Issued February 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to a schedule award for hearing loss; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has duly reviewed the case on appeal and finds that appellant is not entitled to a schedule award for hearing loss.

Appellant, a pipefitter, filed a claim on May 23, 1997 alleging that he developed a loss of hearing due to factors of his federal employment. The Office developed the medical evidence, and by decision dated November 14, 1997, accepted that appellant sustained a hearing loss due to factors of his federal employment. The Office further authorized hearing aids. However, the Office found that appellant's hearing loss was not ratable under the schedule award provisions and that therefore he was not entitled to a schedule award. Appellant requested reconsideration on January 23, 1998. By decision dated April 1, 1998, the Office denied appellant's request finding that he had not submitted relevant new evidence in support of his claim.

The Office properly considered the medical evidence submitted in support of appellant's claim and applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. A medical report was submitted from Dr. James A. Donaldson, a Board-certified otolaryngologist, which conforms to applicable criteria. The hearing losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added and averaged and the "fence of 25 decibels was deducted.[1] The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For a binaural hearing loss, the loss in each ear is calculated using the above formula. The lesser loss is then multiplied by five and added to the greater loss. This amount is then divided by six to arrive at the total binaural hearing loss. For levels recorded in

[1] The A.M.A., *Guides* points out that the loss below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions.

the left ear of 5, 5, 10 and 55, the above formula derives 0 percent monaural loss and for levels recorded in the right ear of 0, 10, 15 and 60, the above formula derives 0 percent monaural loss. According to the accepted formula these combine to reach a 0 percent binaural loss of hearing.

As appellant does not have a ratable loss of hearing, he is not entitled to a schedule award for loss of hearing at this time. The Office properly denied his request for a schedule award.

The Board further finds that the Office properly denied appellant's request for review of the merits of his claim.

Appellant requested reconsideration of the Office's November 14, 1997 decision by letter dated January 23, 1998. In support of his reconsideration request, appellant resubmitted the evidence included in the record to establish his employment-related loss of hearing. Appellant also asked why he was entitled to medical treatment in the form of hearing aids, but was not entitled to a schedule award due to his loss of hearing.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[2] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[3]

In this case, appellant did not submit any new evidence in support of his reconsideration request. Instead he resubmitted evidence already included in the record. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[4] Furthermore, appellant did not submit any argument or legal reasoning in support of his claim. Therefore, the Office properly refused to reopen appellant's claim for review of the merits.

[2] 20 C.F.R. § 10.138(b)(1).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The decisions of the Office of Workers' Compensation Programs dated April 1, 1998 and November 14, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 16, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member