U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE L. FULLER and U.S. POSTAL SERVICE,
POST OFFICE, Oakwood, TX

Docket No. 03-771; Submitted on the Record;
Issued May 23, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant sustained a 30 percent binaural hearing loss which entitled him to a schedule award.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order[1] on September 6, 2002 in which it set aside the February 25, 2002 decision of the Office on the grounds that the case was not in posture for decision regarding whether appellant had more than a 23 percent binaural hearing loss for which he received a schedule award.[2] The Board indicated that the Office had based its February 25, 2002 schedule award on a January 17, 2002 report of an Office medical adviser who evaluated the findings of a November 23, 2001 audiogram obtained by Dr. Andrew J. Lehr, a Board-certified otolaryngologist, who served as an Office referral physician. The Board noted, however, that the record contained other evidence which suggested that appellant has more than a 23 percent binaural hearing loss.[3] The Board indicated that the Office medical adviser did not adequately

[1] Docket No. 02-1181.

[2] On August 28, 2000 appellant, then a 50-year-old automation clerk, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to hazardous noise at work. The Office accepted that appellant sustained an employment-related binaural hearing loss. By decision dated February 25, 2002, the Office granted appellant a schedule award for a 23 percent binaural hearing loss. The award ran for 46 weeks from November 20, 2001 to February 23, 2002.

[3] For example, in a November 2, 2001 report, another Office medical adviser calculated that appellant had a 40 percent binaural hearing loss according to the standards of the A.M.A., *Guides.* The Office medical adviser based his calculations on the findings of an August 20, 2001 audiogram obtained by Dr. Donald Matheson, a Board-certified otolaryngologist, who served as an Office referral physician. This Office medical adviser also indicated in a June 26, 2001 report that appellant had a 41 percent binaural hearing loss based on the findings of an audiogram obtained by Dr. Matheson on February 26, 2001. Dr. Matheson also indicated that appellant had an additional five percent impairment due to tinnitus which impacted his ability to perform activities of daily living.

explain why he chose the November 23, 2001 audiogram as the basis for his evaluation of appellant's hearing loss. Therefore, the Board remanded the case to the Office for further development concerning the extent of appellant's hearing loss. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office requested that an Office medical adviser evaluate the reasons why the November 23, 2001 audiogram was chosen as the basis for the evaluation of appellant's hearing loss. In a September 25, 2002 report, the Office medical adviser indicated that it had been chosen because it was the most recent evaluation from two equally qualified physicians and that the most recent testing would be the most representation of appellant's condition. He indicated that he did not know why there was such a large difference in the degree of hearing loss between the reports of the examining physicians. The Office medical adviser determined that, under these circumstances, it would be appropriate to refer appellant to another qualified physician to evaluate his hearing loss.

In October 2002, the Office referred appellant and the case record to Dr. John M. Moore, a Board-certified otolaryngologist, for otologic and audiologic testing and evaluation of the extent of his hearing loss. In a report detailing his November 12, 2002 evaluation of appellant's hearing, Dr. Moore indicated that appellant had a mild-to-moderate mixed bilateral hearing loss.[4] He noted that he had calculated that appellant has a 31 percent binaural hearing loss.[5] In reports dated January 5 and 9, 2003, an Office medical adviser determined that appellant has a 30 percent binaural hearing loss. He indicated that the evaluation of Dr. Moore provided the appropriate basis for calculating appellant's hearing loss because it was the most recent and met all the relevant standards for reliability. By decision dated January 15, 2003, the Office granted appellant a schedule award for a 30 percent binaural hearing loss. The award ran for 14 weeks from November 12, 2002 to February 17, 2003.

The Board finds that appellant sustained a 32 percent binaural hearing loss and therefore is entitled to a supplemental schedule award to ensure that he receives schedule award compensation for this level of impairment.

The schedule award provisions of the Federal Employees' Compensation Act[6] and its implementing regulation[7] 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

[4] Dr. Moore did not provide a clear opinion regarding the cause of appellant's hearing loss, but the Office has accepted that he sustained employment-related hearing loss.

[5] He also indicated that appellant had an additional five percent impairment due to tinnitus which impacted his ability to perform activities of daily living.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[9] 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.[10] 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.[11] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[12] 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.[13] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[14]

On remand the Office referred appellant to Dr. Moore, a Board-certified otolaryngologist, for otologic and audiologic testing and evaluation of the extent of his hearing loss. The Board notes that this referral was appropriate under the circumstances of the present case and his findings provide an appropriate basis for evaluating appellant's hearing loss.[15] In January 2003, the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Moore and applied the Office's standardized procedures to this evaluation.

However, the Board finds that, due to calculation errors, the Office medical adviser improperly determined that appellant has a 30 percent binaural hearing loss.[16] The Board finds that a proper calculation of appellant's hearing loss establishes that he actually has a 32 percent binaural hearing loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and

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[8] *Id*.

[9] A.M.A., *Guides* 224-25 (4th ed. 1993); A.M.A., *Guides* at 226-51 (5th ed. 2001).

[10] *Id.*

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Donald Stockstad*, 53 ECAB___ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[15] In a September 25, 2002 report, an Office medical adviser explained that it would be most appropriate to use the most recent testing to evaluate hearing loss. He noted, however, that, given the diverging results found among several well-qualified physicians, it would be appropriate to refer appellant to another qualified physician to evaluate his hearing loss. In January 2003, the Office medical adviser explained that the evaluation of Dr. Moore provided the appropriate basis for calculating appellant's hearing loss because it was the most recent and met all the relevant standards for reliability

[16] The Office based its January 15, 2003 schedule award for a 30 percent binaural hearing loss on this determination.

3,000 cycles per second revealed decibel losses of 45, 55, 45 and 40 respectively. These decibel losses total 185 decibels and when divided by 4 yield an average hearing loss of 46.25 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 21.25, which multiplied by the established factor of 1.5 yields a 31.875 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 50, 55, 40 and 35 respectively. These decibel losses total 180 decibels and when divided by 4 yield an average hearing loss of 45 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 20, which multiplied by the established factor of 1.5 yields a 30 percent hearing loss in the left ear. To compute the binaural hearing loss, the lesser loss in the right ear, 30 percent, is multiplied by the established factor of 5, added to the 31.875 percent loss in the left ear and this sum is divided by the established factor of 6 to calculate a 31.98 or 32 percent binaural hearing loss.[17]

Therefore, the evidence or record reflects that appellant has a 32 percent binaural hearing loss under the standards of the A.M.A., *Guides*. He has already received schedule award for a total binaural hearing loss of 30 percent. Appellant should receive a supplemental schedule award to ensure that he receives schedule award compensation for a total binaural hearing loss of 32 percent.

[17] Dr. Moore indicated that appellant had an additional five percent impairment due to tinnitus which impacted his ability to perform activities of daily living. According to the A.M.A., *Guides*, tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination; an impairment percentage of up to five percent may be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living; *see* A.M.A., *Guides* 246 (5th ed. 2001). However, the record does not contain any medical report which explains how employment-related tinnitus would impact appellant's ability to perform activities of daily living. Appellant has not shown that employment-related tinnitus caused or contributed to a permanent and ratable hearing loss or led him to incur medical expenses or sustain a loss in wage-earning capacity; *see Donald A. Larson*, 947, 953-55 (1990); *Charles H. Potter*, 39 ECAB 645, 648-49 (1988).

The January 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant has a 32 percent binaural hearing loss and therefore is entitled to a supplemental schedule award to ensure that he receives schedule award compensation for this level of impairment.

Dated, Washington, DC
May 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member