United States Department of Labor
Employees' Compensation Appeals Board

RONALD F. SHUTTER, Appellant	)	
and	)	**Docket No. 04-1412**
	)	**Issued: November 29, 2004**
DEPARTMENT OF THE ARMY, MINNESOTA ARMY NATIONAL GUARD, CAMP RIPLEY, Little Falls, MN, Employer	)	

Appearances:
Ronald F. Shutter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 3, 2004 appellant timely appealed from an April 8, 2004 merit decision by the Office of Workers' Compensation Programs which found that he had not submitted sufficient evidence to warrant modification of the Office's January 15, 2004 decision. The January 15, 2004 decision found that appellant did not have a ratable hearing loss which would entitle him to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

ISSUE

The issue is whether appellant has a ratable hearing loss for which he would receive a schedule award.

FACTUAL HISTORY

On March 5, 2003 appellant, then a 54-year-old materials handler supervisor, filed an occupational disease claim for a hearing loss. He stated that he had worked at the employing establishment as a tools and parts attendant, materials handler, mechanic, repair parts foreman and materials handler supervisor for over 27 years. He was required to operate wheeled vehicles, materials handling equipment, some track vehicles and engineer equipment. Appellant also did minor repairs on equipment and loaded and unloaded trailers and commercial transporters which delivered equipment to the employing establishment. He indicated that an audiogram at the employing establishment, taken in 1985, showed that he had a hearing loss.

In support of his claim, appellant submitted audiograms from the employing establishment, the results of audiometric tests and other medical reports. Appellant also submitted a history of his noise exposure at work. He indicated that, as a warehouse worker, he was assigned to load and unload trailers and track vehicles, stating that, most of the time, the shop doors were left open, which created a loud echoing noise in the work area. He also operated gas-powered forklifts. As a maintenance supply clerk, appellant worked on wheeled and track vehicles with a number of power tools such as air impact wrenches, grinders and electric power tools. As a materials handler, appellant worked in a warehouse where he was required to use air impact tools, bench grinders and power tools to disassemble and reassemble equipment. He operated a gas-powered forklift as well. He noted that the warehouse was adjacent to the maintenance areas in which mechanics used power tools and operated vehicle engines which occasionally were run with unmuffled exhausts. As a tools and parts handler, appellant was also working adjacent to the mechanics work area. As a materials handler supervisor, appellant supervised employees who used power hand tools and operated forklifts in the warehouse area. He stated that, in the first two positions, the employing establishment did not offer hearing protection while in the latter three positions. Hearing protection began to be provided in the mid to late 1980's.

Appellant submitted a June 3, 2003 report from Dr. Hans E. Bjellum, a Board-certified family practitioner, who stated that, based on information from the employing establishment and reviewing the job descriptions of appellant's positions prior to 1985, appellant had a hearing loss. Dr. Bjellum indicated that appellant's hearing loss had worsened over the prior 18 years and was directly related to his employment over the prior 30 years.

The employing establishment submitted noise surveys from locations in the employing establishment at which appellant worked. The surveys showed that appellant was exposed to noise levels reaching up to 123 decibels (dB).

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Adam M. Soliman, a Board-certified otolaryngologist, for an examination and second opinion on whether appellant had a hearing loss causally related to his employment. Dr. Soliman indicated that an audiogram showed hearing levels in the right ear of 15 dB at 500 hertz (Hz), 15 dB at 1,000 Hz, 15 dB at 2,000 Hz and 30 dB at 3,000 Hz. The audiogram showed hearing levels in the left ear of 15 dB at 500 Hz, 15 dB at 1,000 Hz, 25 dB at 2,000 Hz and 30 dB at 3,000 Hz. Dr. Soliman's audiologist reported that appellant had a speech reception

threshold of 10 dB in both ears. The audiologist indicated that speech reception thresholds and the pure tone average scores agreed.

In an October 13, 2003 report, Dr. Soliman stated that the audiogram showed a high frequency sensorineural hearing loss which started at the 3,000 Hz level. He reported that the hearing loss was moderate to severe. Dr. Soliman noted no significant asymmetry between the test results for each ear and commented that appellant's hearing loss could be caused by noise exposure. He indicated that hearing could get worse due to presbycusis which was due to the aging process. Dr. Soliman compared appellant's audiogram in 1986 with the current audiogram and stated that appellant had high frequency hearing loss when he was 36 years old which confirmed that his hearing loss was due to noise exposure rather than presbycusis. He concluded that appellant had a sensorineural hearing loss caused by exposure to noise at work.

In a November 18, 2003 letter, the Office accepted appellant's claim for bilateral sensorineural hearing loss. The case was forwarded to an Office medical adviser to determine the percentage of any impairment due to the accepted hearing loss.

In a November 24, 2003 memorandum, the Office medical adviser, using the Office standards for hearing loss calculations, found that appellant had a total hearing loss of 75 dB in the right ear and 85 dB in the left ear. He stated that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] appellant had a binaural hearing loss of zero percent. He noted that appellant had deterioration in his hearing commensurate with his employment. The medical adviser pointed out, however, that the hearing loss was not sufficiently severe to warrant a schedule award. He concurred with Dr. Soliman's report that appellant's exposure to noise at work was sufficient in intensity and duration to have caused his hearing loss.

In a January 15, 2004 decision, the Office denied appellant's claim for a schedule award due to his hearing loss as he had "no compensable impairment secondary to his industrial bilateral hearing loss condition."

In a January 19, 2004 letter, appellant requested reconsideration. He reported that he had been discharged from the National Guard because he did not meet the physical requirement for deployment overseas due to findings that he had a permanent level 3 in his hearing loss and had problems with physical capabilities and his legs. His job at the employing establishment required that he be a member of the National Guard. Appellant also contended that co-workers with the same level of hearing loss received schedule awards while he did not.

In an April 8, 2004 merit decision, the Office denied appellant's request for modification on the grounds that the evidence he submitted was insufficient to require modification of its prior decision.

[1] A.M.A. *Guides*, (5th ed. 2001).

LEGAL PRECEDENT

To evaluate industrial hearing loss pursuant to 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.[2] 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.[3] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[4] 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.[5] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[6]

ANALYSIS

The Office medical adviser correctly applied the Office's standard procedures to the audiogram obtained by Dr. Soliman, who concluded that appellant sustained a high frequency sensorineural hearing loss resulting from his federal employment. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 15, 15 and 30 respectively for a total of 75 dB. These losses were divided by 4 for an average hearing loss of 19 dB. The average was reduced by 25 dB (the first 25 dB are deducted, as explain above) to equal 0 dB which was multiplied by 1.5 to arrive at a 0 percent loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 15, 15, 25 and 30 dB respectively for a total of 85 dB. These losses were divided by 4 for an average hearing loss of 21 dB. The average was reduced by 25 dB (as explained above) to equal 0 dB which was multiplied by 1.5 to arrive at a 0 percent loss for the left ear. Appellant therefore had a zero percent hearing loss in each ear. The Board finds that, although appellant sustained an employment-related hearing loss, it is not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.[7]

CONCLUSION

Appellant is not entitled to a schedule award for a binaural hearing loss because the hearing loss in each ear was not sufficiently severe to entitle him to a schedule award.

---

[2] *Id.* at 247.

[3] *Id*. at 250.

[4] *Id.* at 248-50.

[5] *Id.* at 250.

[6] *Donald E. 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).

[7] *Royce L. Chute,* 36 ECAB 202 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated April 8 and January 15, 2004, are hereby affirmed.

Issued: November 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member