

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

_____)	
M.D., Appellant)	
)	
and)	Docket No. 10-2335
)	Issued: June 22, 2011
DEPARTMENT OF THE AIR FORCE, AIR)	
LOGISTICS CENTER, ROBINS AIR FORCE)	
BASE, GA, 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
 ALEC J. KOROMILAS, Judge
 JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 20, 2010 appellant filed a timely appeal from an August 4, 2010 schedule award decision of the Office of Workers' Compensation Programs. 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 sustained a ratable hearing impairment entitling him to a schedule award.

FACTUAL HISTORY

On May 25, 2010 appellant, then a 57-year-old aircraft mechanic, filed an occupational disease claim alleging that he sustained hearing loss as a result of working on aircraft for 18

¹ 5 U.S.C. § 8101 *et seq.*

years. He became aware of his condition and its relationship to his federal employment on March 18, 2010. Appellant did not stop work.

In a May 4, 2010 work and medical history form, appellant stated that he was employed since February 1992 as a sheet metal and aircraft mechanic. He was exposed to loud noise generated by hydraulic test stands, lift equipment, pneumatic tools, aircraft engines, alarms, air blowers and compressors, and diesel machinery for eight hours each workday. Appellant wore earplugs and other protection throughout this period.² He denied any prior history of hearing problems.

In a May 10, 2010 letter, the employing establishment contended that, while appellant was exposed to hazardous noise during his employment, he wore mandatory hearing protection and was enrolled in the hearing conservation program since July 1995, measures which should have adequately safeguarded against hearing loss. In a May 13, 2010 letter, an employing establishment audiologist noted reviewing audiograms taken by the employer since 1992 and noted that there was a threshold shift that might be consistent with noise exposure but appellant's hearing loss was not ratable for impairment purposes. The employer provided audiometric records for appellant from 1992 to 2010. A January 15, 1992 reference audiogram from the employing establishment exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 5, 0, 10 and 15 for the right ear and 5, 10, 5 and 5 for the left ear.

On July 7, 2010 the Office referred appellant for a second opinion to Dr. Sean B. Peppard, a Board-certified otolaryngologist. In a July 22, 2010 report, Dr. Peppard noted appellant's history and observed no physical abnormalities on examination. After reviewing the July 6, 2010 statement of accepted facts and the audiometric data, he noted that appellant's January 15, 1992 baseline audiogram showed normal bilateral hearing at all frequencies. A July 22, 2010 audiogram obtained on behalf of Dr. Peppard exhibited the following losses at 500, 1,000, 2,000 and 3,000 Hz: 15, 5, 10 and 5 dBA for the right ear and 15, 5, 10 and 15 dBA for the left ear. Dr. Peppard opined that appellant sustained high-frequency sensorineural hearing loss in his left ear due to intense, prolonged industrial noise exposure. He recommended hearing protection while in noisy environments.

On July 29, 2010 an Office medical adviser reviewed Dr. Peppard's report and the audiogram taken on his behalf. The medical adviser applied the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) to the July 22, 2010 audiometric results and found that appellant did not have a ratable hearing loss. He identified July 22, 2010 as the date of maximum medical improvement.

By decision dated August 4, 2010, the Office accepted appellant's claim for hearing loss due to employment-related noise exposure, but denied a schedule award on the grounds that his hearing loss was not ratable.⁴

² This information was later incorporated into a July 6, 2010 statement of accepted facts. (rd 7/6/10)

³ A.M.A., *Guides* (6th ed. 2008).

⁴ The Office also found that appellant was not entitled to hearing aids.

LEGAL PRECEDENT

The schedule award provision of the Act⁵ and its implementing regulations⁶ 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. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁷ 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 uniform standards applicable to all claimants. The 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*. 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 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA 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.⁹

ANALYSIS

Appellant filed a claim for hearing loss and the Office developed the matter by referring him to Dr. Peppard. After performing a physical examination and reviewing the statement of accepted facts and audiometric data, he opined in a July 22, 2010 report that appellant sustained left sensorineural hearing loss related to occupational noise exposure. The Office medical adviser, however, calculated that appellant did not have a ratable hearing loss for schedule award purposes. Thereafter, the Office denied a schedule award in an August 4, 2010 decision.

The Office medical adviser applied the Office’s standard procedures to the July 22, 2010 audiogram obtained by Dr. Peppard. Under the Office’s standardized procedures, appellant’s left ear recorded losses of 15, 5, 10 and 15 dBA at 500, 1,000, 2,000 and 3,000 Hz. The total loss was 45 dBA. When divided by 4, the result was an average hearing loss of 11.25 dBA. The average hearing of 25 dBA was reduced by the fence of 25 dBA to equal zero dBA. This figure

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ 5 U.S.C. § 8107(c)(13).

⁸ 20 C.F.R. § 10.404. *See also Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁹ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the left ear. At the same frequency levels, appellant's right ear recorded losses of 15, 5, 10 and 5 dBA. The total loss was 35 dBA. When divided by 4, the result was an average hearing loss of 8.75 dBA. The average hearing of 8.75 dBA was reduced by the fence of 25 dBA to equal zero dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear.

The Board finds that the Office medical adviser applied the proper standard to the July 22, 2010 audiogram which does not support a ratable hearing loss. Therefore, as appellant did not sustain a ratable hearing loss in either ear, he was not entitled to a schedule award.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a ratable hearing impairment.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 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