United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 10-2115**
	)	**Issued: June 3, 2011**
DEPARTMENT OF THE NAVY, TRIDENT REFIT FACILITY, Kings Bay, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 17, 2010 appellant filed a timely appeal from the March 18, 2010 merit decision of the Office of Workers' Compensation Programs, which denied a schedule award and acceptance of a claimed condition. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has a ratable hearing loss, thereby entitling him to a schedule award; and (2) whether appellant's left-sided facial pain is causally related to his accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On April 10, 2007 appellant, a 57-year-old welder supervisor, filed a claim alleging that his bilateral tinnitus was a result of his occupational exposure to noise. The Office accepted his claim for tinnitus and noise-induced hearing loss.

Appellant filed a claim for a schedule award. The Office received serial audiograms from work. A neurologist, Dr. Richard J. Boehme, saw appellant in February 2007 with a one-year history of left-sided facial pain. He diagnosed, among other things, atypical cephalgia/facial pain/trigeminal neuralgia. Dr. Boehme started appellant on Tegretol and Klonopin.

On March 22, 2007 Dr. Boehme noted that appellant had a positive response to Klonopin but still had significant ringing in his ears. He also noted a positive response to the Tegretol for trigeminal neuralgia. Dr. Boehme opined: "[Appellant] does not have any hearing loss other than high[-]frequency hearing loss and he does not have any associated vertigo so most likely this is not Meniere's disease but most likely secondary to nerve damage which is most likely work related."

On November 13, 2007 Dr. R. Michael Loper, a Board-certified otolaryngologist and Office referral physician, found that appellant had a bilateral high-frequency sensorineural hearing loss, in excess of age-related hearing loss, causally related to his occupational exposure to noise. He recommended hearing aids. The reliability of an audiogram obtained that date was judged to be good. Air-conduction hearing thresholds at 500, 1,000, 2,000 and 3,000 hertz (Hz) were 15, 25, 20 and 35 decibels respectively on the right and 15, 20, 20 and 30 decibels respectively on the left.

An Office medical adviser reviewed Dr. Loper's examination and the test results and determined that appellant had no ratable hearing loss.

In October 2008, Dr. Boehme found that appellant had reached maximum medical improvement for his tinnitus and estimated a five percent whole-person impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a decision dated December 10, 2008, the Office denied appellant's schedule award claim. An August 24, 2009 decision of an Office hearing representative affirmed. The hearing representative remanded the case for further development; however, with instructions for the Office medical adviser to determine whether the medical literature supported that trigeminal neuralgia was caused or aggravated by noise exposure in the workplace and for a *de novo* decision on whether to accept trigeminal neuralgia.

The Office medical adviser responded that the etiology of trigeminal neuralgia was unknown; it had no assignable cause: "There is no indication that noise exposure in fed[eral] workplace caused, aggravated, etc, the diagnosed trigeminal neuralgia in this specific case."[2]

[2] The Office medical adviser appears to be an internist specializing in pulmonary diseases.

In a decision dated September 29, 2009, the Office denied appellant's claim for trigeminal neuralgia. It found that Dr. Boehme's opinion was not rationalized and that the weight of the evidence rested with the Office medical adviser, who concluded that the etiology of trigeminal neuralgia was unknown.

On December 22, 2009 Dr. Boehme indicated that appellant had to increase Klonopin for his tinnitus "and this has resulted in some ED [erectile dysfunction] -- will try Cialis."

Appellant submitted audiograms dated June 24, 2009 and January 19, 2010. He also submitted the March 5, 2010 report of Dr. Boehme, who reviewed appellant's history and described his findings on examination. Dr. Boehme stated: offered an opinion on causal relationship: "In my opinion, I feel that [appellant's] condition of atypical cephalgia/facial pain/trigeminal neuralgia, tinnitus and hearing loss, are more likely than not work related. This is due to his long-time exposure to his work environment as described above."

On March 18, 2010 an Office hearing representative affirmed the denial of a schedule award and denial of appellant's claim for trigeminal neuralgia. The hearing representative found that the Office properly determined that appellant had no ratable hearing loss and properly denied a schedule award for tinnitus. The Office hearing representative further found that Dr. Boehme's reports were insufficient to meet appellant's burden of proof to establish that his trigeminal neuralgia was causally related to his federal employment.

On appeal, appellant argues that he has impairment due to hearing loss, tinnitus and trigeminal neuralgia. He noted that he permanently wears hearing aids and that an increase in his medications has caused him to start experiencing erectile dysfunction. Appellant submitted highlighted copies of documents already appearing in the record.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Act[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body, including the loss of hearing. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[4]

Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged. Then, a "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 sounds under everyday listening conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404. The Office began using the fifth edition of the A.M.A., *Guides* on February 1, 2001 and began using the sixth edition on May 1, 2009. It adjudicated appellant's claim in 2008 based on medical evidence obtained in 2007. So the fifth edition applies.

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]

The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to [five] percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."[7]

ANALYSIS -- ISSUE 1

According to the audiometry obtained on November 13, 2007 for Dr. Loper, the Board-certified otolaryngologist and Office referral physician, appellant's hearing thresholds were 15, 25, 20 and 35 decibels on the right and 15, 20, 20 and 30 decibels on the left. These total 95 and 85 decibels, respectively, for averages of 23.75 and 21.25. Because these averages are below the "fence" of 25 decibels, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions. This does not mean he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* sets a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. It was nonratable.

For this reason, the Board finds that the Office properly denied a schedule award for appellant's nonratable hearing loss. The Board also finds that the Office properly denied a schedule award for tinnitus. The Act does not list tinnitus in the schedule of eligible members, organs or functions of the body therefore no claimant may receive a schedule award for tinnitus, at least not directly. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The Board has repeatedly held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.[8] As appellant's hearing loss is not ratable, the Board will affirm the Office's March 18, 2010 decision on the issue of his entitlement to a schedule award.[9]

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

[6] *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[7] A.M.A., *Guides* 246.

[8] *Richard Larry Enders*, 48 ECAB 184 (1996).

[9] The record contains audiograms other than the November 13, 2007 audiogram obtained for Dr. Loper, including more recent audiograms obtained on June 24, 2009 and January 19, 2010. Audiograms must meet the criteria established by Office procedures. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995). The Board has held that the Office need not review an uncertified audiogram that has not been prepared in connection with an examination by a medical specialist. *Alfred Avelar*, 26 ECAB 426 (1975).

LEGAL PRECEDENT -- ISSUE 2

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[10] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[11]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[12]

ANALYSIS -- ISSUE 2

Appellant seeks compensation benefits for his left-sided facial pain. He therefore has the burden of proof to establish that the diagnosis is causally related to his accepted employment injury.

The attending neurologist, Dr. Boehme, concluded on March 22, 2007 that appellant's condition was most likely secondary to nerve damage that was most likely work related. He did not make clear whether he was referring to the significant ringing in appellant's ears, which the Office has already accepted as a compensable work injury or the diagnosis of trigeminal neuralgia. Dr. Boehme was discussing hearing loss and the absence of any associated vertigo. He offered no explanation how appellant's work caused nerve damage or how this nerve damage in turn caused a particular medical condition.

On March 5, 2010 Dr. Boehme associated appellant's atypical cephalgia/facial pain/trigeminal neuralgia with work. He felt the condition was more likely than not work related and added that this was due to "his long-time exposure to his work environment as described above." Again Dr. Boehme did not provide a full explanation. He did not discuss the nature of appellant's condition, what it was in appellant's work environment that caused his left-sided facial pain or how the pathophysiologic mechanism or process worked. The Office accepted that appellant's exposure to hazardous noise in the workplace caused tinnitus and a nonratable hearing loss. If this noise exposure also caused appellant's left-sided facial pain, Dr. Boehme must offer a sound medical explanation.

[10] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[11] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[12] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

Medical conclusions unsupported by rationale are of little probative value.[13] Dr. Boehme opined that appellant's left-sided facial pain was more likely than not work related, but he provided no medical rationale. The Board therefore finds that his opinion has little probative value and is insufficient to discharge appellant's burden of proof.

Further weakening appellant's case, the Office medical adviser noted that the etiology of trigeminal neuralgia is unknown, that it has no assignable cause. This only emphasizes the need for Dr. Boehme to provide the reason he believes that the condition is related to appellant's work environment.[14]

The Board will therefore affirm the Office's March 18, 2010 decision on the issue of left-sided facial pain.

Appellant argues on appeal that he has impairment due to hearing loss, tinnitus and trigeminal neuralgia. The Office accepts that he has a work-related hearing loss and tinnitus, for which he may receive medical benefits, but this alone does not entitle him to a schedule award. Noise at work must cause a certain level of hearing loss -- with an average hearing threshold over 25 decibels -- before any impairment is recognized by the A.M.A. *Guides*. Appellant's work-related hearing loss fell short of that level, so he may not receive a schedule award for his hearing loss or tinnitus. As the Board noted earlier, this does not mean he has no hearing loss and it does not mean that hearing aids are not beneficial. Whether an increase in appellant's medications has caused erectile dysfunction is an issue not before the Board, as the Office has not issued a final decision on the matter.[15]

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss and is therefore not entitled to a schedule award for tinnitus. The Board also finds that he has not met his burden of proof to establish that his left-sided facial pain is causally related to his accepted employment injury.

[13] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[14] *Mary L. Henninger*, 52 ECAB 408 (2001).

[15] The Board has jurisdiction to consider and decide appeals from final decisions of the Office in any case arising under the Act. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board