

File Number: 062291256
HR21-D-H

RECEIVED OCT 25 2013

U.S. DEPARTMENT OF LABOR

OCT 17 2013

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear Mr.

This is in reference to your workers' compensation claim. Pursuant to your request for a Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed on . It has been determined that the decision of the District Office should be **reversed** as outlined in the attached decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address: PO Box 8300, District 06; London, KY 40742-8300.

Sincerely,



Mary Anne Meier,
Hearing Representative
Branch of Hearings and Review

PAUL FELSER, ESQUIRE
PO BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant,*

Case No.

*Examination of the written record was completed in Washington, DC. Based on this
review, the decision of the District Office dated March 5, 2013 has been AFFIRMED for
the reasons set forth below.*

The issue for determination is whether the medical evidence demonstrates that
hearing aids are medically necessary

The claimant was an _____ with the _____ the
_____ when he filed a CA-2, Notice of Occupational
Disease claim form for hearing loss he attributed to his employment activities

This claim was initially denied; however, following a reconsideration appeal, this claim
was accepted for bilateral hearing loss by decision dated June 4, 2012. In a separate
decision, the District Office denied the claim for a schedule award, as well as coverage
for hearing aids, based upon the second opinion examination and the DMA's review of
the audiogram results.

The claimant appealed the denial of the schedule award and the need for hearing aids,
and following an oral hearing, the Office decision with regard to the claim for a
schedule award was *affirmed*; however, the file was *remanded* for further development
of the medical evidence to determine whether hearing aids were medically necessary.

On January 31, 2013, the District Medical Advisor reviewed the audiometric testing
and letter from Dr. _____ as well as the second opinion report, and opined that
based upon audiogram test results, hearing aids were not medically necessary.

The claimant disagreed with that decision and requested a telephonic hearing;
however, this appeal was then changed to a request for a review of the written record.
Accordingly, the agency was notified of this by letter dated July 29, 2013.

Based on my review of the written record, I find that the decision of the District Office
should be *REVERSED*.

Section 8103(a) provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides to the Evaluation of Permanent Impairment*. 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. 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.²

The second opinion examiner, Dr. _____ noted that the claimant was a candidate for hearing aids due to his moderately severe sensorineural hearing loss; however, hearing aids were initially denied based upon the DMA's opinion that hearing aids would be redundant and that the hearing loss was not ratable. The claimant then submitted a report from Dr. _____ that supported the need for hearing aids, and following an appeal, Dr. _____ report was referred to the DMA for review and his opinion. Dr. _____ report was reviewed by the Dr. _____ the District Medical Advisor, on _____ and _____. He noted that the claimant had speech discrimination scores of 100% bilaterally, and nearly normal hearing through 3000 Hz, with normal PTA and SRT values, and opined that he "did not believe the claimant would benefit substantially from hearing aids." He concluded that he did not agree with Dr. _____ that the claimant's "conversational hearing would be improved 'significantly' with hearing aids."

On appeal, the claimant submitted a narrative report from Dr. _____ who is in the same practice as Dr. _____. Dr. _____ noted that the claimant had a multi-year history of noise exposure and that "high-frequency sensorineural hearing loss correlates in many cases with bothersome chronic tinnitus." He concluded that the claimant's sensorineural hearing loss was aggravated by a history of chronic noise exposure and that amplification could provide significant benefits. Dr. _____ report was consistent with, and largely duplicative of, the _____ report previously submitted by Dr. _____.

On review, I find that the DMA's opinion is not sufficiently rationalized to be considered the weight of medical opinion with regards to the question of whether or not hearing aids should be authorized. The medical rationale noted by the DMA was that the claimant did not have a hearing deficit that was "even close to a level that would qualify for an award" and that hearing aids would not "significantly" improve conversational hearing. Whether the claimant has a ratable hearing loss, or whether his hearing would be "significantly" improved with amplification, is not the basis for determining the medical necessity of hearing aids. Rather, the medical evidence must

¹ Robert S. Winchester, 54 ECAB 800, (2002)

² Donald E. Stockstad, 53 ECAB 1570, (2002),

demonstrate that the requested appliance will give relief or reduce the degree of disability.

Both the second opinion examiner and the claimant's attending physicians have indicated that the claimant's hearing would be improved with bilateral hearing aids, especially in group settings and with daily living activities.

Therefore, I find that the weight of medical opinion supports that bilateral hearing aids would give relief and reduce the degree of the claimant's hearing disability.

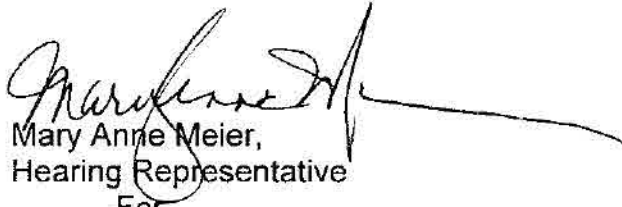
Upon receipt of this file, the District Office should advise the claimant that bilateral hearing aids are approved and advise him of the proper procedure for requesting authorization of such.

Consistent with the above findings, I find that the District Office decision of March 15, 2013 should be *REVERSED*.

The file is returned for further processing as noted.

OCT 17 2013

Dated:
Washington, DC


Mary Anne Meier,
Hearing Representative
For
Director,
Office of Workers'
Compensation Programs