United States Department of Labor
Employees' Compensation Appeals Board

AMADO DAVILA, Appellant	)	
and	)	**Docket No. 04-182**
	)	**Issued: March 8, 2004**
U.S. BORDER PATROL, Kingsville, TX, Employer	)	

Appearances:
Amado Davila, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 20, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 11, 2003 schedule award decision. The Board has jurisdiction of the schedule award issue under 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has more than an 11 percent binaural loss for which he received a schedule award. On appeal, appellant argues that the medical evidence establishes a 12 percent binaural hearing loss.

FACTUAL HISTORY

The Office accepted appellant's claim for a bilateral noise-induced hearing loss. On July 15, 2003 appellant filed a claim for a schedule award. The record contained an audiogram dated May 6, 2003. In a report dated May 12, 2003, appellant's treating physician, Dr. Antonio C. Andrade, an otolaryngologist, found that the May 6, 2003 audiogram revealed a

12 percent binaural loss. In a report dated June 19, 2003, based on the May 6, 2003 audiogram, an Office medical adviser determined that appellant had an 11.3 percent binaural loss.

By decision dated September 11, 2003, the Office granted appellant a schedule award for an 11 percent binaural loss. The award ran for 22 weeks commencing May 6, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides.*[4] 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.[5] 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.[6] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.[7] 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 loss.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[4] *Marco A. Padilla*, 51 ECAB 202, 205 (1999); *Arthur E. Anderson*, *supra* note 3 at 697.

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id.*

[9] *Donald E Stockstad*, 53 ECAB _____ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-570 (issued August 13, 2002).

ANALYSIS

In a June 19, 2003 report, the Office medical adviser reviewed the results of the May 6, 2003 audiogram. He found that, for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second, the left ear revealed 35, 30, 35 and 30 decibels, respectively, which totaled 130 decibels which, when divided by 4, yielded an average hearing loss at those frequencies of 32.5 decibels. The district medical adviser reduced the 32.5 decibels by the 25 decibel "fence" to equal 7.5. He then multiplied 1.25 by the established factor of 1.5 to obtain a monaural loss in the left ear of 11.25 percent.

The district medical adviser totaled the decibel losses at the above-mentioned frequencies for the right ear of 30, 35, 30 and 35 decibels respectively, which totaled 130 decibels, which when divided by 4, yields an average hearing loss at those frequencies of 32.5. He reduced the 32.5 decibels by the 25 decibel fence to equal 7.5. He then multiplied 7.5 by the established factor of 1.5 to obtain a monaural loss of 11.25 percent. The district medical adviser then multiplied the 11.25 percent loss in the left ear by 5, added it to the 11.25 percent loss in the right ear and divided the sum by 6 to calculate appellant's binaural loss at 11.25 percent.

In his report dated May 6, 2003, Dr. Andrade reviewed the same decibel losses for each ear at the applicable frequencies as the district medical adviser. However, in calculating the average hearing loss for the right ear based on the total of those frequencies (130 divided by 4), he rounded up the 32.5 figure to 33. Dr. Andrade then subtracted the fence of 25, and multiplied by 1.5, for a 12 percent hearing loss. Appellant argues that the 12 percent figure is correct and should be the basis for his schedule award. There is no provision, however, in the A.M.A., *Guides* for rounding the average hearing levels. The Office procedure manual states that percentages should not be rounded in hearing loss cases until the final percent for schedule award purposes is calculated.[10] The Office medical adviser properly calculated the hearing loss using 32.5 as the average hearing loss, resulting in a binaural hearing loss of 11.25 percent. Fractions are rounded down from .49 to the nearest whole number,[11] and therefore the Office properly determined that appellant had an 11 percent binaural hearing loss in this case. The probative evidence of record does not establish more than an 11 percent binaural hearing loss.

CONCLUSION

The Board finds that the district medical adviser applied the proper standards to the May 6, 2003 audiogram to determine that appellant has an 11.25 percent binaural hearing loss. The Office therefore properly granted a schedule award for an 11 percent binaural hearing loss.

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994).

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member