

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

RONNIE D. KEEL, Appellant

and

**TENNESSEE VALLEY AUTHORITY,
Chattanooga, TN, Employer**

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**Docket No. 04-2129
Issued: February 14, 2005**

Appearances:
Ronnie D. Keel, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 30, 2004 appellant filed a timely appeal of the August 17, 2004 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant is entitled to a schedule award for his employment-related bilateral hearing loss.

FACTUAL HISTORY

On October 15, 2003 appellant, then a 59-year-old coal tower foreman, filed an occupational disease claim alleging that he sustained hearing loss due to factors of his federal employment. Appellant first realized that his hearing loss was caused by his employment in the mid 1970's. Appellant did not stop work until he retired in August 1999. In support of his

claim, appellant submitted a position description and qualifications statement including his employment history and audiometric records from 1976 to 1998.¹

By letter dated May 10, 2004, the Office requested information from appellant concerning his employment after leaving the employing establishment in 1999. In an undated response received by the Office on July 6, 2004, appellant indicated that he had not worked anywhere else.

On July 28, 2004 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Phillip B. Clapper, a Board-certified otolaryngologist, for a second opinion evaluation.

On August 10, 2004 an audiologist performed audiometric testing for Dr. Clapper. The audiologist noted that appellant had no exposure to noise for over 16 hours, that the results of the August 10, 2004 audiogram were valid and that the audiometer was last calibrated on May 14, 2004. In an accompanying report, Dr. Clapper diagnosed bilateral noise-induced sensorineural hearing loss which was worse at four cycles per second and which he attributed to noise exposure during appellant's federal employment. He recommended that appellant wear ear protection.

On August 16, 2004 an Office medical adviser reviewed Dr. Clapper's August 10, 2004 report and accompanying audiogram. He found that appellant had bilateral sensorineural hearing loss but did not have a ratable impairment to either ear and was not entitled to a schedule award.

By decision dated August 17, 2004, the Office accepted appellant's claim for a bilateral hearing loss but found that it was not severe enough to be ratable. The Office further found that the evidence did not establish that appellant would benefit from hearing aids and consequently denied his claim for additional medical benefits.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American

¹ The audiometric records were submitted by the employing establishment and were taken as part of an employing establishment hearing conservation program.

² 5 U.S.C. § 8107.

Medical Association, *Guides to the Evaluation of Permanent Impairment* 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*. 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.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

On August 16, 2004 the Office medical adviser reviewed the otology and audiologic testing performed on appellant for Dr. Clapper, a Board-certified otolaryngologist. He applied the Office’s standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 10 and 35 respectively. These losses totaled 75 decibels and were divided by 4 to obtain the average hearing loss of 18.75 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear.

³ 20 C.F.R. § 10.404 (1999). On January 29, 2001 the Office announced that, effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* (5th ed.) (2001). FECA Bulletin No. 01-05 (issued January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *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).

Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 20, 15 and 40 respectively. These decibel losses were correctly totaled at 95 decibels and were divided by 4 to obtain the average hearing loss of 23.75 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. The Office medical adviser concluded that appellant had a 0 percent binaural hearing loss; therefore, appellant did not have a ratable loss of hearing.

The Board finds that, although appellant's claim for hearing loss was accepted, his hearing loss is not ratable under the protocols of the A.M.A., *Guides*.⁹ As discussed, the percentage of hearing loss to both ears was zero percent. Consequently, appellant is not entitled to a schedule award. Further, as there is no objective evidence designating a need for hearing aids or other treatment, appellant is not entitled to additional medical benefits.

CONCLUSION

Appellant failed to establish that he is entitled to a schedule award for his employment-related binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁹ 5 U.S.C. §§ 8101-8193.