

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

JAMES K. CORBIN, Appellant

and

**DEPARTMENT OF THE ARMY, ALABAMA
NATIONAL GUARD, Montgomery, AL,
Employer**

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**Docket No. 04-2130
Issued: March 14, 2005**

Appearances:
James K. Corbin, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 30, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 6, 2004, granting a schedule award for an eight percent left monaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issue.

ISSUE

The issue is whether appellant has more than an eight percent left monaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On December 23, 2003 appellant, then a 54-year-old automotive worker, filed an occupational disease claim alleging that on October 30, 1984 he first realized that his hearing loss and difficulty with speech communication due to hearing loss was caused by factors of his federal employment. He worked at the employing establishment since July 28, 1974 and hearing

protection was not furnished until 1984. Appellant and the employing establishment submitted employment records, noise exposure data and medical documents including audiograms performed by the employing establishment. He retired from the employing establishment on May 3, 2004.

On April 2, 2004 the Office referred appellant, the case record, a statement of accepted facts and a list of questions, to Dr. Joseph A. Motto, a Board-certified otolaryngologist for a second opinion medical examination to determine the cause, extent and degree of hearing loss and its relationship to his federal employment. In an April 16, 2004 report, Dr. Motto diagnosed mild to moderate high frequency sensorineural hearing loss. However, he opined that appellant's hearing loss was not due to the noise exposure encountered in appellant's federal employment as his high frequency changes on the audiogram taken were not in excess of age expected changes. An accompanying audiogram performed on April 16, 2004 and signed by Dr. Motto reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps). Testing of the right ear revealed decibel losses of 15, 20, 30 and 35, respectively and testing of the left ear revealed decibel losses of 20, 20, 25 and 55, respectively.

The Office sent the case record to its Office medical adviser for review. In an April 28, 2004 report, the Office medical adviser reviewed Dr. Motto's April 16, 2004 report and audiogram and opined that the high frequency changes shown at 3,000 cps on the left and at 2,000/3,000 cps on the right side exceeded the normal aging process.

The Office found a conflict in the medical opinion evidence regarding the causal relationship of appellant's hearing loss and referred appellant, together with the case file, to Dr. Toby S. Morgan, a Board-certified otolaryngologist. In a June 14, 2004 report, Dr. Morgan provided a history of appellant's condition, detailed findings on examination and noted that appellant had occasional tinnitus, but advised that it was not his major problem. Dr. Morgan indicated that appellant had a high frequency hearing loss in both ears, with a little more in the left than the right, which was compatible with noise exposure. He advised that the hearing test was normal and that appellant had an understanding of 96 percent in the left ear and 92 percent in the right ear. Dr. Morgan further stated that he saw no sign of anything active occurring in appellant's ears. In an addendum report dated June 15, 2004, Dr. Morgan advised that appellant's hearing impairment had been evaluated in accordance to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and that he had a zero percent impairment for the right ear and a six percent impairment for the left ear. A copy of a chart, which listed appellant's audiograms of record, referenced an audiogram dated June 14, 2004 which reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps. Testing of the right ear revealed decibel losses of 20, 15, 25 and 30, respectively and testing of the left ear revealed decibel losses of 20, 15, 25 and 55, respectively.

In a July 14, 2004 report, the Office medical adviser noted that Dr. Morgan opined that appellant's hearing loss was compatible with noise exposure. The Office medical adviser noted that the June 14, 2004 audiogram resulted in a left monaural hearing loss of six percent while the April 16, 2004 audiogram resulted in a left monaural hearing loss of eight percent. The Office medical adviser stated that the above slightly different values were within normal statistical variation.

On July 14, 2004 the Office accepted appellant's claim for a monaural hearing loss. On July 21, 2004 appellant filed a claim for a schedule award. By decision dated August 6, 2004, the Office issued a schedule award for an eight percent left monaural hearing loss for 4.16 weeks of compensation which ran from April 16 to May 15, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ However, neither the Act nor the regulation specifies the manner in which the percentage of impairment shall be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Supra* note 2.

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS

The Board finds that Dr. Morgan was not an impartial medical specialist as indicated by the Office. Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹¹ In this case, however, the Office found a conflict in the medical opinion evidence between two Office physicians: Dr. Motto, a second opinion physician, and an Office medical adviser. Accordingly, the Board finds that as a conflict in medical opinion did not occur, Dr. Morgan was a referral physician rather than an impartial medical specialist addressing whether appellant's hearing loss was causally related to his federal employment.¹²

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. Motto's April 16, 2004 report and Dr. Morgan's June 14 and 15, 2004 reports. The Office medical adviser calculated the extent of hearing loss as follows: For Dr. Motto's April 16, 2004 audiogram, the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cps were 15, 20, 30 and 35 decibels which totaled 100 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 25 decibels. The average of 25 decibels was reduced by the "fence" of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cps were 20, 20, 25 and 55 decibels which totaled 120 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 30.0 decibels, which was reduced to 5 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 7.5 percent hearing loss for the left ear which, using the Office procedure of rounding to the next whole number,¹³ equates to an 8 percent hearing loss for the left ear.

For Dr. Morgan's June 14, 2003 audiogram the decibel loss for the right ear at 500, 1,000, 2,000 and 3,000 cps were 20, 15, 25 and 30 decibels which totaled 90 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 22.5 decibels, which was reduced to 0 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cps were 20, 15, 25 and 55 decibels which totaled 115 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 28.75 decibels, which was reduced to 3.75 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at 5.63 or a 6 percent hearing loss for the left ear.

The Office medical adviser noted that the difference in impairment values between the April 16, 2004 and the June 14, 2004 audiograms were within normal statistical variation. The Board finds that the Office could properly rely on the Office medical adviser's opinion in

¹¹ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002).

¹² *See Harold Burkes*, 42 ECAB 199, 201-04 (1990).

¹³ *See Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700.4(b)* (November 1998).

deciding to base the schedule award on the April 16, 2004 audiogram, which demonstrated an eight percent left monaural hearing loss. No other audiogram demonstrates a higher degree of hearing loss.

The Office's August 6, 2004 decision awarded appellant 4.16 weeks of compensation for an eight percent left monaural hearing loss. Under the Act, the maximum award for monaural hearing loss is 52 weeks of compensation.¹⁴ Eight percent of 52 weeks is 4.16 weeks of compensation for appellant's left monaural hearing loss and 0 percent of 52 weeks is 0 weeks of compensation for appellant's right monaural hearing loss, resulting in a total of 4.16 weeks of compensation. As this equals the 4.16 weeks of compensation for left monaural hearing loss awarded by the Office, the Board finds that appellant is entitled to no more than the 4.16 weeks of compensation already awarded.

On appeal, appellant contends that the schedule award he received for his hearing loss was not adequate compensation, particularly since his hearing loss interferes with the kind of work he was trained to do and he suffers from chronic tinnitus. The A.M.A., *Guides* states: "tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent for tinnitus in the presence of measurable hearing loss may be added if the tinnitus impacts the ability to perform activities of daily living."¹⁵ The Board notes that while Dr. Morgan stated that appellant had occasional tinnitus, he did not provide a detailed discussion of this diagnosis and only advised that the occasional tinnitus was not appellant's major problem. None of the other medical evidence of record addresses tinnitus. Thus, as there is no medical evidence of record which discusses the effect of appellant's occasional tinnitus, the evidence of record does not establish that appellant's tinnitus impacts the ability to perform activities of daily living. Appellant is therefore not entitled to an additional schedule award for his tinnitus.

CONCLUSION

The Board finds that appellant is entitled to no more than the eight percent permanent impairment for a left monaural hearing loss for which he received a schedule award.

¹⁴ 5 U.S.C. § 8107(c)(13)(A).

¹⁵ A.M.A., *Guides*, *supra* note 5 at 246.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 6, 2004 is affirmed.

Issued: March 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member