

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

---

**JOHN P. DEFFES, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL AIR  
DEPOT, Jacksonville, FL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 05-1508  
Issued: October 14, 2005**

*Appearances:*  
*John P. Deffes, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 6, 2005 appellant filed a timely appeal from a May 26, 2005 merit decision of the Office of Workers' Compensation Programs finding a three percent binaural hearing loss for which he received a schedule award. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than a three percent binaural hearing loss, for which he had received a schedule award.

**FACTUAL HISTORY**

On September 13, 2004 appellant, then a 42-year-old aircraft quality assurance specialist, filed a claim alleging that he sustained hearing loss while in the performance of duty. Appellant and the employing establishment submitted records documenting his employment history and noise exposure. These records included a summary of appellant's audiogram results from May 1989 to September 2004.

On December 28, 2004 the Office referred appellant, a statement of accepted facts and medical records, to Dr. R. Michael Loper, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated January 14, 2005, Dr. Loper noted findings on examination and diagnosed mild to moderately severe noise-induced sensorineural hearing loss. He opined that appellant's condition was employment related. Accompanying the physician's report was a January 14, 2005 audiogram performed on his behalf.

On February 9, 2005 the Office medical adviser reviewed the audiogram obtained for Dr. Loper and calculated that appellant had a three percent binaural hearing loss. The medical adviser also recommended that hearing aids be authorized.

In a decision dated March 15, 2005, the Office accepted appellant's claim for a bilateral hearing loss.

On March 18, 2005 appellant filed a claim for a schedule award. On May 26, 2005 the Office granted appellant a schedule award for a three percent binaural hearing loss, for the period January 14 to February 25, 2005.

### **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.<sup>1</sup> 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 Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

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 hertz (Hz), the losses at each frequency are added up and averaged.<sup>3</sup> 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.<sup>4</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>5</sup> 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

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

arrive at the amount of the binaural hearing loss.<sup>6</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>7</sup>

### ANALYSIS

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings noted in Dr. Loper's January 14, 2005 report. In reviewing appellant's January 14, 2005 audiogram and applying the formula noted above, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz for the right ear revealed decibels losses of 0, 10, 45 and 70, respectively for a total of 125 decibels. When divided by 4, the result is an average hearing loss of 31.25 decibels. The average loss of 31.50 is reduced by 25 decibels to equal 6.25, which when multiplied by the established factor of 1.5, resulted in a 9.38 percent monaural hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 0, 5, 40 and 60, respectively, for a total loss of 105 decibels which, when divided by 4, results in an average 26.25 decibels. When reduced by the 25 decibel fence, this results in 1.25 which is then multiplied by the factor of 1.5 which results in a 1.88 percent monaural hearing loss of the left ear. The 1.88 percent hearing loss for the left ear (the ear with the lesser loss), when multiplied by 5, yields a product of 9.4. The 9.4 is then added to the 9.38 percent hearing loss for the left ear (the ear with the greater loss) to obtain a total of 18.78. The 18.78 is then divided by 6, in order to calculate a binaural loss of hearing of 3.13 percent. Accordingly, the medical adviser properly relied on the Office's standardized procedures in determining that appellant had a three percent binaural hearing loss.

On appeal, appellant argues that the monetary amount of the schedule award is inadequate. A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.<sup>8</sup> With respect to the schedule awards for binaural hearing impairments, the pertinent provision of the Act provides that, for a total, or 100 percent loss of hearing in both ears, an employee shall receive 200 weeks of compensation.<sup>9</sup> In the instant case, appellant does not have a total, or 100 percent binaural hearing loss, but rather a 3 percent binaural hearing loss. As such, he is entitled to 3 percent of the 200 weeks of compensation, which is 6 weeks. The Office properly determined the amount of compensation for which appellant is entitled under the schedule award.

---

<sup>6</sup> *Id.*

<sup>7</sup> *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>8</sup> *Supra* note 1.

<sup>9</sup> 5 U.S.C. § 8107(c)(13)(b).

**CONCLUSION**

Appellant failed to establish that he has more than a three percent permanent binaural hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 26, 2005 is affirmed.

Issued: October 14, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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