

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

JULIO G. HOLGUIN, Appellant

and

**DEPARTMENT OF THE ARMY, WHITE
SANDS MISSILE RANGE, White Sands, NM,
Employer**

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**Docket No. 05-1786
Issued: October 24, 2005**

Appearances:
Julio G. Holguin, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 12, 2005 merit decision granting him schedule award compensation for hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a six percent hearing loss in his left ear, for which he received a schedule award.

FACTUAL HISTORY

On September 13, 2004 appellant, then a 55-year-old electronics technician, filed an occupational disease claim alleging that he sustained hearing loss due to exposure to noise at work, including noise from vehicles, tools, engines, machines and loud speakers. Appellant indicated that he was exposed to these noises for 8 hours per day while he worked at the same

work site for the past 17 years. The employing establishment submitted documentation confirming that appellant was exposed to these types of noises as alleged.

Appellant submitted numerous audiograms, dated between 1978 and 2004, which were obtained by the employing establishment. None of the audiograms were completed by or certified by a physician.

The Office referred appellant to Dr. Twana L. Sparks, a Board-certified otolaryngologist, for otologic and audiologic testing. In a report dated February 24, 2005, Dr. Sparks indicated that testing on that date for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 20, 30, 20 and 45 respectively and that testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 20, 20 and 25 respectively. Dr. Sparks stated that appellant's hearing loss was due to exposure to occupational noise and provided a calculation which indicated that he had a 5.6 percent hearing loss.

The Office accepted appellant's claim for left-sided noise-induced hearing loss. On June 16, 2005 appellant filed a claim for schedule award compensation due to his employment-related hearing loss.

On April 7, 2005 an Office district medical adviser reviewed the February 24, 2005 otologic and audiologic testing performed on appellant by Dr. Sparks and applied the Office's standardized procedures to this evaluation.¹ He determined that appellant had a 5.6 percent hearing loss on the left under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

By award of compensation, the Office granted appellant a schedule award for a six percent hearing loss of the left ear. The award ran for 3.12 weeks from February 24 to March 17, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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

¹ The Office medical adviser indicated that he chose the February 24, 2005 audiogram because it was the most recent and was certified by a physician.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.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 If there is a loss in each ear, 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

ANALYSIS

On April 7, 2005 an Office district medical adviser reviewed the February 24, 2005 otologic and audiologic testing performed on appellant by Dr. Sparks, a Board-certified otolaryngologist, and 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 cps revealed decibel losses of 20, 30, 20 and 45 respectively. These decibel losses were totaled at 115 decibels and were divided by 4 to obtain the average hearing loss of 28.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 3.75 which was multiplied by the established factor of 1.5 to compute a 5.6 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 20, 20 and 25 respectively. These decibel losses total 70 decibels and when divided by 4 result in an average hearing loss of 17.5 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a 0 percent hearing loss. The Board notes that the Office medical adviser properly applied the A.M.A., *Guides* to

⁴ *Id.*

⁵ A.M.A., *Guides* 226-51 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald Stockstad*, 53 ECAB 301, 303 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

show that appellant has a 5.6 percent left-sided hearing loss, or 6 percent when rounded up, and the Office properly granted him a schedule award for this degree of hearing loss.¹¹

Appellant contends that the schedule award he received was not adequate compensation for his hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.¹² The Act establishes a maximum of 52 weeks of compensation as the award for total hearing loss in one ear.¹³ A partial loss of hearing is compensated at a proportionate rate,¹⁴ so appellant's award of compensation for a 6 percent left-sided hearing loss entitled him to 6 percent of 52 weeks of compensation, or 3.12 weeks of compensation. The record indicates that appellant has already received this amount of compensation. Because appellant has been fully compensated for the six percent left-sided hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a six percent hearing loss in his left ear, for which he received a schedule award.

¹¹ The Office medical adviser properly chose the February 24, 2005 audiogram because it was the most recent and was certified by a physician. None of the other audiograms of record was completed by or certified by a physician. The Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹² 5 U.S.C. § 8107(c).

¹³ 5 U.S.C. § 8107(c)(13)(B).

¹⁴ 5 U.S.C. § 8107(c)(19).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 12, 2005 decision is affirmed.

Issued: October 24, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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