United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 07-96**
	)	**Issued: March 8, 2007**
DEPARTMENT OF THE ARMY, PUBLIC WORKS BUSINESS CENTER, Fort Bragg, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2006 appellant filed a timely appeal from an August 2, 2006 Office of Workers' Compensation Programs' decision adjudicating his claim for a schedule award. Pursuant to 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 two percent impairment of the right ear causally related to his employment and whether he has any ratable impairment of the left ear.

FACTUAL HISTORY

On June 4, 2003 appellant, then a 55-year-old maintenance mechanic supervisor (chief of utilities), filed an occupational disease claim alleging that he sustained bilateral hearing loss and ringing in his ears causally related to noise exposure at work.[1] On March 22, 2005 the Office

[1] In a May 21, 2003 report, an otolaryngologist diagnosed bilateral high frequency sensorineural hearing loss caused by industrial noise exposure and bilateral tinnitus.

accepted his claim for bilateral noise-induced hearing loss. On March 30, 2005 appellant filed a claim for a schedule award. He submitted copies of audiograms dated 1971 to 2000.

The Office referred appellant to Dr. Walter R. Sabiston, a Board-certified otolaryngologist, for an examination on March 3, 2005. Dr. Sabiston stated that appellant had bilateral high frequency sensorineural hearing loss caused by industrial noise exposure. An audiogram performed on March 3, 2005 revealed the results of testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps): right ear decibels of 10, 5, 25 and 65; left ear decibels of 5, 5, 5 and 60.

On March 18, 2005 an Office medical adviser reviewed the results of the audiometric testing performed for Dr. Sabiston and applied the Office's standardized procedures. He totaled the decibels of 10, 5, 25 and 65 in the right ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 105 decibels and divided by 4 to obtain the average hearing loss of 26.25 decibels. This average was then reduced by 25 decibels to equal 1.25 decibels which was multiplied by the established factor of 1.5 to compute a 1.88 percent impairment of the right ear, rounded to 2 percent.[2] The Office medical adviser totaled the losses of 5, 5, 5 and 60 in the left ear at 75 decibels and divided by 4 to obtain the average hearing loss of 18.75 decibels. This average was then reduced by 25 decibels to equal zero which was multiplied by the established factor of 1.5 to compute a zero percent impairment of the left ear. The Office medical adviser indicated that appellant had a two percent impairment of the right ear and a zero percent left ear impairment, according to the standardized Office procedures for determining entitlement to a schedule award.

By decision dated August 2, 2005, the Office granted appellant a schedule award for 1.04 weeks for a two percent impairment in the left ear.[3]

LEGAL PRECEDENT

The schedule award provision of the Act[4] and its implementing regulation[5] 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*

[2] Multiplying 1.25 by 1.5 equals 1.875 which the Office medical adviser rounded to 1.88.

[3] The Federal Employees' Compensation Act provides for 52 weeks of compensation for 100 percent loss of hearing in one ear. 5 U.S.C. § 8107(c)(13)(A). Multiplying 52 weeks by 2 percent equals 1.04 weeks of compensation.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

Impairment (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating losses.[6]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M..A, *Guides*.[7] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[8] 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.[9] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[10] 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.[11] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[12]

ANALYSIS

The Office medical adviser reviewed the results of the audiometric testing performed on March 3, 2005 for Dr. Sabiston and properly applied the Office's standardized procedures. He totaled the decibels of 10, 5, 25 and 65 in appellant's right ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 105 decibels and divided by 4 to obtain the average hearing loss of 26.25 decibels. This average was then reduced by 25 decibels to equal 1.25 decibels which was multiplied by the established factor of 1.5 to compute a 1.88 percent impairment of the right ear, rounded to 2 percent. The Office medical adviser totaled the losses of 5, 5, 5 and 60 in the left ear at 75 decibels and divided by 4 to obtain the average hearing loss of 0 decibels. This average was then reduced by 25 decibels to equal 1.25 decibels which was multiplied by the established factor of 1.5 to compute a zero percent impairment of the left ear. The Board finds that the Office medical adviser correctly determined that appellant had a two percent impairment of the right ear and no ratable impairment of the right ear.

On appeal, appellant asserts that he should be compensated for ringing in both ears, a condition called tinnitus. The A.M.A, *Guides* allows for compensation of up to five percent for tinnitus "in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."[13] The Board has held that there is no basis for paying a schedule

[6] *Id.*

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

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

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

[13] A.M.A., *Guides* 246; *Leslie M. Mahin*, 55 ECAB 311 (2004).

award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a permanent and ratable loss of hearing under the Act's schedule award provisions.[14] On May 21, 2003 an otolaryngologist diagnosed bilateral high frequency sensorineural hearing loss caused by industrial noise exposure and bilateral tinnitus. However, he did not address whether the tinnitus caused or contributed to appellant's hearing loss. Dr. Sabiston did not diagnose tinnitus. The medical evidence in this case does not establish that appellant has a tinnitus condition that caused or contributed to his loss of hearing. Consequently, appellant is not entitled to a schedule award for his tinnitus condition.

CONCLUSION

The Board finds that appellant has no more than a two percent impairment of the right ear. He has no ratable impairment of the left ear.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2005 is affirmed.

Issued: March 8, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[14] *Donald A. Larson*, 41 ECAB 947 (1990); *Charles H. Potter*, 39 ECAB 645 (1988).