

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

J.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA, Employer**

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**Docket No. 08-38
Issued: March 19, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2007 appellant timely appealed the August 7, 2007 merit decision of the Office of Workers' Compensation Programs, which determined that appellant was not entitled to a schedule award as he did not have a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On December 3, 2004 appellant, then a 57-year-old electronic mechanic, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his employment. Appellant submitted an unsigned audiogram dated November 15, 2004 and a chronology of audiogram results dated on February 2, 2005, prepared by Audiologist Angela Williamson.

The Office referred appellant to Dr. Dwayne Atwell, an otolaryngologist, for a second opinion evaluation on March 30, 2005. An audiogram was completed on March 30, 2005, which reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 10, 10, 10 and 15, respectively and on the right of 20, 15, 15 and 15, respectively. Dr. Atwell diagnosed moderate high frequency neurosensory loss. He opined that the hearing loss was due to appellant's employment as he worked as a mechanic and was exposed to significant noise.

On May 6, 2005 the Office accepted appellant's claim for bilateral hearing loss.

On July 25, 2007 appellant requested a schedule award. On August 1, 2007 the district medical adviser reviewed the March 30, 2005 audiogram results and used them to calculate appellant's impairment rating finding that he had a zero percent impairment and therefore did not have a ratable hearing loss.

On August 7, 2007 the Office denied appellant's request for a schedule award, finding that his bilateral hearing loss was not severe enough to be considered ratable.

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.¹ 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.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, 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

¹ The Act provides that for complete, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

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

⁵ *Id.*

⁶ *Id.*

calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷

ANALYSIS

In support of his claim for an employment-related hearing loss, appellant submitted an unsigned audiogram dated November 15, 2004 and a chronology of audiogram results dated and prepared by Audiologist Williamson on February 2, 2005. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing. The audiograms were not certified by a physician as being accurate. The Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist.⁸

Due to the lack of appropriate medical evidence, the Office referred appellant for a second opinion examination by Dr. Atwell, a Board-certified otolaryngologist. An Office medical adviser reviewed the audiogram and Dr. Atwell's report and correctly applied the Office's standardized procedures to the March 30, 2005 audiogram. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 15, 15 and 15, respectively. These decibel losses were totaled at 65 and divided by 4 to obtain the average hearing loss per cycle of 16.25. The average of 16.25 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the right ear. The 0 was multiplied by the 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 10 and 15, respectively. These decibel losses were totaled at 45 and divided by 4 to obtain the average hearing loss per cycle of 11.25. The average of 11.25 was then reduced by the 25 decibel fence to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Office medical adviser properly found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides*. The Board finds that the Office medical adviser applied the proper standards to the March 30, 2005 audiogram. The result is a nonratable hearing loss bilaterally.⁹

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.

⁷ *Id.*

⁸ *Robert E. Cullison*, 55 ECAB 570 (2004).

⁹ To determine the binaural hearing loss, the lesser loss is multiplied by five and added to the greater loss and divided by six. Appellant has a zero percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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