

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

J.C., Appellant

and

**DEPARTMENT OF THE NAVY, NAVY
PUBLIC WORKS CENTER, Norfolk, VA,
Employer**

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**Docket No. 08-1880
Issued: January 21, 2009**

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 June 26, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing loss decision dated April 18, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award.

ISSUE

The issue is whether appellant has more than an 18 percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On August 2, 2002 appellant, then a 48-year-old environmental protections specialist, filed an occupational disease claim alleging that he sustained a hearing impairment as a result of working in an environment with excessive noise in the performance of duty.

On March 3, 2004 appellant filed a claim for a schedule award and retired on December 31, 2004.

On April 10, 2007 the Office accepted appellant's claim for subjective tinnitus due to his employment-related noise exposure and bilateral sensorineural hearing loss. In a letter dated July 11, 2007, it requested that appellant submit additional factual and medical evidence.

A September 6, 2007 report from Dr. Alan S. Keyes, a Board-certified otolaryngologist, indicated that appellant had a normal audiogram in 1965. Dr. Keyes advised that appellant had sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. He diagnosed noise-induced sensorineural hearing loss and opined that appellant's workplace exposure was sufficient to have caused the loss in question. Dr. Keyes also recommended bilateral hearing aids. He referred to the September 6, 2007 audiogram 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 20, 25, 40 and 60 respectively and on the right of 20, 25, 45 and 70 respectively.

On February 8, 2008 an Office medical adviser utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*), to determine if appellant's bilateral sensorineural hearing loss was ratable for schedule award purposes. She utilized Dr. Keyes' results and referred to Tables 11-1 and 11-2¹ and determined that appellant had a 22.5 percent monaural hearing loss in the right ear, 16.85 percent hearing monaural loss in the left ear and 18 percent binaural hearing loss. The Office medical adviser advised that appellant reached maximum medical improvement on January 31, 2008.

In an April 18, 2008 decision, the Office awarded appellant a schedule award for 18 percent binaural hearing loss. The award covered a period of compensation from March 23 to July 26, 2006.

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.² 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 A.M.A.,

¹ A.M.A., *Guides* 247, 248.

² 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).

Guides as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).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

ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the September 6, 2007 audiogram and results from Dr. Keyes, which comprised testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps, and revealed decibel losses of 20, 25, 45 and 70 respectively. The Board notes that, for the right ear, these decibel losses equate to a total of 160 decibels, which when divided by four to obtain the average, equates to an average hearing loss of 40 decibels. This average loss reduced by 25 decibels (25 decibels being discounted as discussed above) is equal to 15. The Board notes that this figure when multiplied by 1.5 would result in 22.5 percent value for a monaural loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 25, 40 and 60 respectively. These decibel losses total 145 decibels and when divided by four result in an average hearing loss of 36.25 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 11.25 for the left ear. This value multiplied by 1.5 would result in a 16.875 monaural impairment. The 16.875 value for the left ear (the lesser value) multiplied by 5 would equate to 84.375 and would be added to 22.5 and result in 106.875, which would be divided by 6 and result in a 17.8125 percent binaural hearing loss. It is proper Office policy to round the calculated percentage of impairment to the nearest

³ 20 C.F.R. § 10.404 (2006).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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

whole number.¹¹ Fractions are rounded down from 0.49 and up from 0.50.¹² The Board finds that this would result in the 17.8125 being rounded to an 18 percent binaural hearing loss.

Appellant has not established that he sustained a hearing impairment greater than the previously awarded 18 percent binaural hearing loss for which he received compensation.¹³

CONCLUSION

The Board finds that appellant has not established that he has more than an 18 percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 18, 2008 is affirmed.

Issued: January 21, 2009
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

¹¹ *J.Q.*, 59 ECAB ____ (Docket No. 06-2152, issued March 5, 2008).

¹² *Carl J. Cleary*, 57 ECAB 563 (2006).

¹³ Appellant made an additional argument on appeal regarding the date of injury; however, the Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).