

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

HARRY MINOR, Appellant

and

**TENNESSEE VALLEY AUTHORITY,
Muscle Shoals, AL, Employer**

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**Docket No. 04-66
Issued: February 19, 2004**

Appearances:
Harry Minor, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 10, 2003 appellant filed a timely appeal of the June 2, 2003 decision of the Office of Workers' Compensation Programs, which affirmed a July 2, 2002 schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than a nine percent hearing loss of the left ear, for which he received a schedule award.

FACTUAL HISTORY

Appellant, a retired machine operator, has an accepted claim for a monaural hearing loss of the left ear. On May 3, 2002 appellant filed a claim for a schedule award. By decision dated July 2, 2002, the Office granted appellant a schedule award for a nine percent left ear monaural hearing loss. The Office based its determination on the May 22, 2002 calculation of its medical adviser, who in turn, relied on the May 6, 2002 audiological evaluation and report submitted by

Dr. George Godwin, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 4.68 weeks.

By letter dated July 23, 2002, appellant requested a hearing, which was held on April 3, 2003. Subsequent to the hearing, appellant submitted an April 14, 2003 audiogram and a similarly dated report from Don W. Littrell, a hearing aid specialist. In a decision dated June 2, 2003, the Office hearing representative affirmed the Office's July 2, 2002 schedule award.

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

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 cycles per second, the losses at each frequency are added up and averaged.³ 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.⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁵ 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.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁷

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). On January 29, 2001 the Office announced that, effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* 5th Edition (2001). FECA Bulletin No. 01-05 (January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404.

³ A.M.A., *Guides* at 250 (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS

The Office medical adviser reviewed the results of audiometric testing performed on May 6, 2002 and correctly applied the Office's standardized procedures. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing losses of 20, 10, 10 and 35 decibels, respectively. These decibel losses were totaled 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 a figure less than 0, which represented a 0 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 20, 35 and 45, respectively. These decibel losses were totaled at 125 decibels, and were divided by 4, to obtain the average hearing loss of 31.25 decibels. This average of 31.25 decibels, was then reduced by 25 decibels to equal 6.25, which when multiplied by the established factor of 1.5 resulted in a 9.38 percent hearing loss in the left ear.

The Board finds that the Office medical adviser correctly applied the procedures in the A.M.A., *Guides*, and the Office's procedure manual to the May 6, 2002 audiometric testing results obtained for Dr. Godwin, and determined that appellant had a nine percent hearing loss of the left ear.

The April 14, 2003 audiogram and accompanying report from Mr. Littrell are not probative on the issue of appellant's entitlement to an increased schedule award. Mr. Littrell is not a physician under the Act and, therefore, his opinion regarding the cause and extent of appellant's hearing impairment is not probative.⁸ The April 14, 2003 audiogram is deficient in that it does include information regarding the calibration of the equipment used, does not show the date and hour of appellant's last noise exposure, and does not contain a statement concerning the reliability of the testing.⁹ Consequently, the reliable medical evidence of record does not establish that appellant has greater than a nine percent monaural loss of hearing of the left ear.

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.¹⁰ With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that, for a total, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks of compensation.¹¹ In the instant case, appellant does not have a total, or 100 percent monaural hearing loss, but rather at most a 9 percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 9 percent loss of use of his left ear, he is entitled to 9 percent of the 52 weeks of compensation, which is 4.68 weeks.

⁸ See 5 U.S.C. § 8101(2).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.a (September 1994); Exhibit 4 (December 1994, September 1996).

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(13)(A).

The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled.

CONCLUSION

Appellant failed to establish that he has more than a nine percent permanent hearing loss in the left ear.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 19, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member