

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

W.V., Appellant

and

**TENNESSEE VALLEY AUTHORITY,
KINGSTON FOSSIL PLANT, Harriman, TN,
Employer**

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**Docket No. 07-1582
Issued: December 3, 2007**

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 May 23, 2007 appellant filed a timely appeal from a March 9, 2007 decision of the Office of Workers' Compensation Programs granting a schedule award for hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained greater than six percent binaural hearing loss in the performance of duty, for which he received a schedule award.

FACTUAL HISTORY

On January 5, 2006 appellant, then a retired 62-year-old boilermaker and welder, filed an occupational disease claim for binaural high frequency hearing loss due to exposure to hazardous noise above 85 decibels at work from 1975 to 1992. He noted that he first became aware of his condition and related it to his federal employment on August 1, 1994. Accompanying the claim,

appellant submitted annual employing establishment audiograms obtained through an employing establishment hearing conservation program.¹ He also provided audiometric test results from a private-sector employer from July 13, 2000 to June 2, 2005.

Accompanying a March 24, 2006 letter, the employing establishment provided employment records showing that appellant worked at the employing establishment for intermittent periods from September 29, 1975 to January 3, 1992. During this time, appellant was exposed to noise levels from 77 to 96 decibels produced by coal pulverizers, boilers, turbines and other heavy equipment for four to six hours a day, five days a week. The employing establishment acknowledged that a September 30, 1986 annual employing establishment audiogram demonstrated a hearing loss. After January 1992, appellant worked for a private-sector contractor at the employing establishment.²

On July 25, 2006 the Office referred appellant to Dr. Joseph A. Motto, a Board-certified otolaryngologist, for a second opinion evaluation. A statement of accepted facts and the medical record were provided for the physician's review.

In an August 2, 2006 report, Kenneth Parker, an audiologist, noted audiometric findings. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 25, 25 and 50 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 20, 25 and 90 decibels. Tympanometry was normal bilaterally. Dr. Motto submitted an August 2, 2006 report reviewing the audiometric findings. He provided a graph explaining that the pattern and severity of appellant's bilateral hearing loss was greater than that expected with age and commensurate with his federal occupational noise exposure. Dr. Motto diagnosed a severe bilateral high frequency sensorineural hearing loss consistent with appellant's history of occupational noise exposure.

On August 7, 2006 the Office referred Dr. Motto's report and audiometric findings to an Office medical adviser for calculation of a schedule award according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In an August 8, 2006 report, the Office medical adviser totaled the decibel losses for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 10, 25, 25 and 50 to equal 110. He then divided this total by 4 to obtain the average hearing loss at those cycles of 27.5 decibels. The average of 27.5 decibels was then reduced by the 25 decibel "fence" to equal 2.5, which was multiplied by the established factor of 1.5 to compute a 3.75 percent loss of

¹ The Board has held that a program of annual audiometric examination conducted by an employing establishment in conjunction with an employee testing program is sufficient to constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury. See *James A. Sheppard*, 55 ECAB 515 (2004). Audiograms obtained on September 18, 1975, January 10, 1977 and October 5, 1978 were marked as normal. The employing establishment marked an August 11, 1980 audiogram as abnormal and counseled appellant regarding the hearing loss. A September 30, 1986 audiogram and June 21, 1988 physical examination report also noted a hearing loss.

² In a May 25, 2006 letter, appellant noted that, prior to working at the employing establishment; he served in the armed forces from 1963 to 1968 and worked as a private-sector heating and air conditioning mechanic from 1969 to 1974.

hearing for the right ear. The medical adviser then totaled the 10, 20, 25 and 90 decibel losses in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 145. He then divided this total by 4 to obtain the average hearing loss at those cycles of 36.25 decibels. The average of 36.25 decibels was then reduced by 25 decibels to equal 11.25 which was multiplied by the established factor of 1.5 to compute a 16.875 percent loss of hearing for the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the lesser loss, 3.75 by 5, added this to the greater loss of 16.875 and divided this figure by 6 to arrive at an 5.9375 percent binaural sensorineural hearing loss, rounded up to equal a 6 percent binaural hearing loss. He recommended a trial of hearing aids.

On August 9, 2006 the Office accepted that appellant sustained a bilateral hearing loss and authorized hearing aids and related supplies. Appellant claimed a schedule award on September 26, 2006.

By decision dated March 9, 2007, the Office granted appellant a schedule award for a six percent binaural hearing loss. The period of the award ran from August 2 to October 24, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.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 The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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

³ 5 U.S.C. §§ 8101-8193.

⁴ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

The Office accepted that appellant sustained a binaural high frequency sensorineural hearing loss due to hazardous noise exposure at work. To determine appellant's entitlement to a schedule award, the Office obtained a second opinion report and audiometric test results from Dr. Motto, a Board-certified otolaryngologist. The Board finds that Dr. Motto used the appropriate portions of the A.M.A., *Guides* and accurately calculated a six percent binaural hearing loss.

The Office medical adviser properly applied the Office's standardized procedures to the August 2, 2006 audiogram by Dr. Motto.¹⁰ Testing for the right ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 25, 25 and 50 decibels, respectively. These decibel losses were totaled at 110 and divided by 4 to obtain the average hearing loss per cycle of 27.5. The average of 27.5 was then reduced by the 25 decibel fence to equal 2.5 decibels for the right ear.¹¹ The 2.5 decibels were multiplied by 1.5 resulting in a 3.75 percent loss for the right ear. Following the same mathematical procedure, the medical adviser totaled the 10, 20, 25 and 90 decibel losses in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 145. He divided the total by 4 to obtain the average hearing loss at those cycles of 36.25 decibels, reduced by 25 decibels to equal 11.25. The medical adviser then multiplied the 11.25 by the established factor of 1.5, resulting in a 16.875 percent loss of hearing for the left ear. To compute the binaural hearing loss, the Office medical adviser multiplied the lesser loss, 3.75 by 5, added this to the greater loss of 16.875, then divided this figure by 6. This resulted in a 5.9375 percent binaural hearing loss, rounded up to equal 6 percent. Based on the Office medical adviser's interpretation of Dr. Motto's findings, the Office granted appellant a schedule award for a six percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings in the August 2, 2006 report of Dr. Motto and accompanying audiogram performed on his behalf. The result is a six percent binaural hearing loss. The Board further finds that the Office medical adviser properly relied upon the August 2, 2006 audiogram as it was part of

⁸ *Id.*

⁹ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁰ While the record contains prior audiograms, there is insufficient information accompanying these audiogram to demonstrate that they met the Office's standards for audiograms used in the evaluation of permanent hearing impairments. *M.E.*, 58 ECAB ____ (Docket No. 07-1189, issued September 20, 2007); Federal (FECA) Procedure Manual, Part 3 -- *Medical, Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹¹ The decibel fence is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 decibels or less. *See* A.M.A., *Guides* 250.

Dr. Motto's evaluation and met all the Office's standards.¹² Therefore, the Office properly found that appellant had a six percent binaural hearing loss due to hazardous noise exposures at work.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than a six percent binaural hearing loss in the performance of duty, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2007 is affirmed.

Issued: December 3, 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

¹² See Federal (FECA) Procedure Manual, Part 3 -- *Medical, Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).