

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

CLINTON L. CARPENTER, Appellant

and

**DEPARTMENT OF THE ARMY, MISSISSIPPI
ARMY NATIONAL GUARD, Charleston, MS,
Employer**

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**Docket No. 04-1308
Issued: September 28, 2004**

Appearances:
Clinton L. Carpenter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 20, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' schedule award decision dated March 22, 2004 granting him a schedule award for a nine percent hearing loss of the right ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

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

FACTUAL HISTORY

On September 25, 2002 appellant, then a 53-year-old heavy mobile equipment repairer, filed an occupational disease claim alleging that on October 31, 1985 he first became aware of his hearing loss and realized that his condition was caused by factors of his federal employment. Appellant indicated that he was last exposed to the implicated factors on September 10, 2002, the

date he retired. He stated that he worked around noise levels above 85 decibels without hearing protection. Appellant explained that his claim was not filed within 30 days of the date of injury because he was told that "compensation could only be filed upon retirement." In support of his claim, appellant submitted employment records, which included an application for federal employment, a description of the position of general mechanic, a history of his exposure to noise at the employing establishment and employers in the private sector and audiograms performed by the employing establishment on January 29, May 7 and October 8, 1986, September 9, 1987, August 22, 1988, July 11, 1991, March 16 and October 20, 1994, September 26, 2000 and April 24, 2002.

By letter dated November 5, 2002, the Office referred appellant to Dr. Samuel Lambdin, a Board-certified otolaryngologist, together with a statement of accepted facts for a second opinion medical examination to determine whether his claimed hearing loss was caused by factors of his federal employment.

Dr. Lambdin submitted a November 21, 2002 medical report finding, among other things, that appellant suffered noise-induced sensorineural hearing loss that was caused by noise exposure encountered in his federal employment. He stated that appellant should wear noise protection and undergo another audiogram in one year. Dr. Lambdin's report was accompanied by a November 21, 2002 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 20, 20 and 70 respectively and in the left ear as 15, 15, 15 and 45 respectively.

On December 11, 2002 an Office medical adviser reviewed Dr. Lambdin's report and accompanying audiogram. He noted that Dr. Lambdin reported that the speech reception thresholds and pure tone averages in both ears were valid. The Office medical adviser stated that appellant reached maximum medical improvement on November 21, 2002 and determined that he had bilateral sensorineural hearing loss with a right monaural hearing loss, which entitled him to a schedule award for a nine percent impairment of the right ear. The Office medical adviser indicated that a hearing aid was not authorized.

In a December 13, 2002 letter, the Office advised appellant that his claim had been accepted for bilateral noise-induced hearing loss and requested that he complete a Form CA-7 for a schedule award or for wage loss and have the employing establishment complete the appropriate portion. By letter dated October 27, 2003, the Office informed appellant that he was entitled to a schedule award and that he should complete the enclosed Form CA-7 and submit it to the employing establishment for processing. On March 11, 2004 the Office received appellant's claim for a schedule award.¹

By decision dated March 22, 2004, the Office granted appellant a schedule award for a nine percent permanent loss of use of his right ear for the period November 21 to December 23, 2002, a total of 4.68 weeks.

¹ The Board notes that appellant's schedule award claim was signed by him on January 7, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁴ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

To determine the extent and degree of any employment-related hearing loss, the Office referred appellant to Dr. Lambdin, the second opinion physician, who evaluated appellant on November 21, 2002 and in a report of the same date, concluded that appellant had sustained a noise-induced sensorinural hearing loss causally related to his exposure to noise in his federal

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404 (2002).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404 (1999); *Donald E. Stockstad*, 53 ECAB __ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

⁶ A.M.A., *Guides* 246, 247 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

employment. The Office medical adviser applied the Office's standardized procedures to the November 21, 2002 audiogram performed for Dr. Lambdin, noting that the speech reception thresholds and pure tone averages were valid according to Dr. Lambdin. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 20, 20 and 70, respectively for a total of 125 decibels. When divided by 4, the result is an average hearing loss of 31.25 decibels. The average loss of 31.25 is reduced by 25 decibels to equal 6.25, which when multiplied by the established factor of 1.5, results in a 9.375 or 9 percent monaural hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 15, 15, 15 and 45, respectively, for a total of 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 is reduced by 25 decibels to equal 0, which when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the left ear.

The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in the November 22, 2002 audiogram and determined that appellant had a nine percent permanent loss of use of his right ear. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a nine percent permanent loss of use of his right ear.

The audiograms performed by the employing establishment are not probative on the issue of appellant's entitlement to a schedule award as they are not accompanied by an otological evaluation.¹² These audiograms also do not offer an opinion on the issue of whether appellant's hearing loss was causally related to his federal employment. These audiograms are, therefore, insufficient to meet appellant's burden of proof. Further, the May 7, 1986 audiogram did not provide testing at 3,000 cycles per second and, thus, it cannot serve as a basis for making a schedule award determination under the A.M.A. *Guides*.

As the evidence of record does not establish that appellant has greater than a nine percent loss of hearing in his right ear, for which he already received a schedule award, he is not entitled to an additional schedule award.

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.¹³ 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 1 ear, an employee shall receive 52 weeks of compensation.¹⁴ 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 right ear, he is entitled to 9 percent of the 52 weeks of compensation, which is 4.68 weeks.

¹² See *George L. Cooper*, 40 ECAB 296 (1988).

¹³ 5 U.S.C. § 8107.

¹⁴ 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

The Board finds that appellant is not entitled to more than a nine percent hearing loss of the right ear, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member