

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

ANTHONY B. COOPER, Appellant

and

**DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT ADMINISTRATION,
Arlington, VA, Employer**

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**Docket No. 05-930
Issued: August 16, 2005**

Appearances:
Anthony B. Cooper, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 23, 2005 which found that he had a two percent hearing loss in the left 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 two percent left monaural hearing loss. On appeal, appellant alleges that he has tinnitus and was told he had high pitched hearing loss in both ears.

FACTUAL HISTORY

On June 22 and July 7, 2004 appellant, then a 52-year-old special agent, filed a claim alleging that his high frequency hearing loss was a result of noise exposure in his federal employment. Appellant's federal noise exposure occurred between May 1984 and

February 1997 when he was stationed in Nassau, Bahamas and worked deployments aboard aircrafts. As the law enforcement agent on board, he was required to sit in the back of the aircraft directly under where the jet engines of the aircraft were located. The employing establishment submitted material which acknowledged that appellant had a significant high frequency hearing loss. On November 16, 2004 the Office referred appellant, together with the medical record, a statement of accepted facts and a series of questions, to Dr. Ronald A. Burk, a Board-certified otolaryngologist, for an evaluation of his hearing.

In a December 2, 2004 report, Dr. Burk examined appellant and reviewed an audiogram obtained December 1, 2004, the results of which he determined were valid and representative of appellant's hearing sensitivity. He found that appellant had high frequency sensorineural hearing loss, slightly worse in the left than the right, due to noise exposure in his federal employment. The December 1, 2004 audiogram performed by an audiologist accompanied Dr. Burk's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 15, 25 and 35, respectively and in the left ear decibel losses of 15, 15, 25 and 50, respectively. Continued ear protection in a noisy environment was recommended.

On December 15, 2004 an Office medical adviser reviewed the December 1, 2004 audiogram and found that it met the Office standards and was an integral part of Dr. Burk's evaluation. From this audiogram, the Office medical adviser determined that appellant had a left-sided monaural hearing loss of two percent.

In a letter dated December 22, 2004, the Office accepted appellant's claim for a bilateral sensorineural hearing loss.

On December 28, 2004 appellant filed a claim for a schedule award.

By decision dated February 23, 2005, the Office issued a schedule award for a two percent hearing loss for the left ear for 1.04 weeks of compensation during the period December 1 to 8, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged. Then, a 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 sounds under

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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.³ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

ANALYSIS

Dr. Burk, the Office referral physician, examined appellant and submitted a report dated December 12, 2004 finding that appellant sustained bilateral sensorineural hearing loss related to exposure to noise in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the December 1, 2004 audiogram obtained by Dr. Burk. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 25 and 35, respectively for a total of 85 decibels. When divided by 4, the result is an average hearing loss of 21.25 decibels. The average loss of 21.25 is reduced by the 25 decibel fence to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 15, 15, 25 and 50, respectively, for a total of 105 decibels. When divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 decibels is reduced by the 25 decibel fence to equal 1.25, which, when multiplied by the established factor of 1.5, results in a 1.88 or 2 percent hearing loss for the left ear.

Section 8107 of the Act sets forth how many weeks of compensation are payable to an employee who sustains a permanent impairment of hearing.⁵ For a complete loss of hearing in one ear, an employee may receive 52 weeks of compensation. For a complete loss of hearing in both ears, he may receive 200 weeks of compensation. Partial losses are compensated proportionally.⁶ A percentage of monaural loss of hearing is therefore 2 percent of 52 weeks, or 1.04 weeks of compensation, which the Office awarded.

The Board finds that the Office properly applied standardized procedures to appellant's most recent audiogram and properly issued a schedule award for a two percent left monaural hearing loss. The Board will affirm the Office's February 23, 2005 decision.

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

⁴ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁵ 5 U.S.C. § 8107(13).

⁶ *Id.* at § 8107(19).

On appeal appellant states that he has tinnitus. The A.M.A., *Guides* provides for the addition of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living.⁷ In his report, Dr. Burk noted that appellant described constant tinnitus, but did not indicate that tinnitus impacted appellant's ability to perform the activities of daily living. Accordingly, the Board finds that appellant is not entitled to an additional award for tinnitus.

CONCLUSION

Appellant has a two percent left-sided monaural loss of hearing, for which the Office issued an appropriate schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *Leslie M. Mahin*, 55 ECAB ____ (Docket No. 04-555, issued February 12, 2004); A.M.A., *Guides* at 246 (5th ed. 2001).