

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

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**FRED H. McMILLAN, Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Bragg, NC, Employer**

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**Docket No. 05-1463  
Issued: September 16, 2005**

*Appearances:*  
*Fred H. McMillan, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On June 29, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated June 15, 2005. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

**ISSUE**

The issue is whether appellant has established that he has greater than a 46 percent binaural hearing loss for which he received a schedule award.

**FACTUAL HISTORY**

Appellant, a 59-year-old heavy equipment operator, filed a claim for benefits on March 16, 2004, claiming that he sustained a hearing loss caused by factors of his employment, and that he became aware that this injury was causally related to his employment on March 16, 2004. Appellant has been employed with the employing establishment since 1978. He was exposed to loud noise produced by the operation of heavy equipment such as tractors, cranes, bulldozers, military vehicles such as armored personnel carriers and tanks, and explosive devices.

On February 24, 2005 the Office referred appellant and a statement of accepted facts to Dr. Robert Hosea, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

In a report dated March 16, 2005, Dr. Hosea noted findings on audiological evaluation based on a March 16, 2005 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 20, 55, 75 and 90 decibels; left ear -- 25, 30, 80 and 85 decibels. Based on these findings, Dr. Hosea concluded that appellant had a hearing loss of 52.50 percent in his right ear and a 45 percent loss in his left ear, which amounted to a 46 percent binaural hearing loss.

In a memorandum dated March 23, 2005, an Office medical adviser, relying on Dr. Hosea's audiogram results and calculations, determined that appellant had a 46 percent permanent binaural hearing loss.

On June 15, 2005 the Office granted appellant a schedule award for a 46 percent permanent binaural hearing loss for the period March 16, 2005 to December 20, 2006, for a total of 92 weeks of compensation.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.<sup>1</sup> 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.<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.<sup>3</sup>

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deduced since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>4</sup> Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. The binaural loss is determined by calculating the loss in each ear using

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-391 (1977).

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> A.M.A., *Guides*, page 250 (5<sup>th</sup> ed. 2001).

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 binaural hearing loss.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The case was referred to an Office medical adviser to apply the Office's standardized procedures to the March 16, 2005 audiogram performed for Dr. Hosea. According to the Office's standardized procedures, testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses of 20, 55, 75 and 90 decibels respectively. These decibels, totaled to 240 and divided by 4, obtained an average hearing loss at those cycles of 60 decibels. The average of 60 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 35 decibels, which when multiplied by the established factor of 1.5 computes a 52.50 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 Hz revealed decibel losses of 25, 30, 80 and 85 respectively. These decibels amounted to 220, which, when divided by 4, obtains an average hearing loss at those cycles of 55 decibels. The average of 55 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 30, which when multiplied by the established factor of 1.5 amounts to a 45 percent hearing loss in the left ear. The Office medical adviser then multiplied the lesser loss of 45 percent in the left ear by 5, added this figure to the greater loss of 52.50 and divided the total by 6 to arrive at a 46 percent binaural hearing loss.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides*, to determine that appellant has a 46 percent total binaural hearing loss causally related to his federal employment. The Board therefore affirms the June 15, 2005 Office decision finding that appellant is entitled to a schedule award of no greater than a 46 percent permanent binaural hearing loss.

### **CONCLUSION**

The Board finds that appellant has no more than a 46 percent binaural hearing loss for which he received a schedule award.

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<sup>5</sup> *Id.* See also *Danniel C. Goings*, *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 16, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board