

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

OSCAR M. ZARAGOZA, Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
AVIATION DEPOT, Jacksonville, FL, Employer**

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**Docket No. 06-149
Issued: February 7, 2006**

Appearances:
Oscar M. Zaragoza, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 31, 2005 appellant filed a timely appeal of the August 26, 2005 merit decision of the Office of Workers' Compensation Programs which granted a schedule award for binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's schedule award claim.

ISSUE

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

FACTUAL HISTORY

On February 18, 2005 appellant, a 57-year-old aircraft pneudraulic systems mechanic, filed an occupational disease claim for hearing loss. On July 14, 2005 the Office accepted his claim for bilateral noise-induced hearing loss. Appellant filed a claim for a schedule award on August 15, 2005.

In a decision dated August 26, 2005, the Office granted a schedule award for six percent loss of use of both ears. The Office based its determination on the July 12, 2005 calculation of

its medical adviser, who relied on the June 30, 2005 audiological evaluation and report submitted by Dr. R. Michael Roper, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 12 weeks from June 30 to September 21, 2005.

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 Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the losses at each frequency are added up and averaged.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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 and added to the greater loss then divided by six to arrive at the amount of binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

In reviewing appellant's most recent audiogram dated June 30, 2005, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear reveal decibel losses of 20, 20, 35 and 40, respectively, for a total of 115 decibels. This figure, when divided by 4 results in an

¹ The Act provides that, for a total or 100 percent loss of hearing of both ears, an employee shall receive 200 weeks of compensation. 5 U.S.C. § 8107(c)(13)(B).

² 20 C.F.R. § 10.404 (1999).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (January 29, 2001).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB 301 (2002), *pet. for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

average hearing loss of 28.75 decibels. The average loss of 28.75 is reduced by 25 decibels to equal 3.75, which when multiplied by 1.5 results in a 5.625 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 20, 40 and 45 decibels respectively, for a total of 125 decibels. Utilizing the above-noted formula results in a 9.375 percent left ear monaural hearing loss. The 5.625 percent hearing loss for the right ear (the ear with the lesser loss) when multiplied by 5 yields a product of 28.125. The 28.125 is then added to the 9.375 percent hearing loss for the left ear (the ear with the greater loss) to obtain a total of 37.5, which when divided by 6 represents a binaural loss of hearing of 6.25 percent. This figure was properly rounded to the closest whole number, 6 percent.⁹

The Office medical adviser applied the proper standards to the findings as stated in Dr. Roper's report and the accompanying June 30, 2005 audiogram. Accordingly, appellant failed to establish that he has greater than six percent binaural hearing loss.

CONCLUSION

The Office properly granted appellant a schedule award for six percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).