

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

SALVADOR OCHOA, JR., Appellant

and

**DEPARTMENT OF JUSTICE, U.S. MARSHALS
SERVICE, Houston, TX, Employer**

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**Docket No. 06-159
Issued: February 6, 2006**

Appearances:
Salvador Ochoa, Jr., 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 November 1, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 30, 2005 granting him a schedule award for a loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a two percent loss of hearing on the left side for which he received a schedule award.

FACTUAL HISTORY

On May 6, 2004 appellant, then a 68-year-old former Deputy U.S. Marshal, filed an occupational disease claim alleging that he sustained a loss of hearing and ringing in both of his ears. In a statement accompanying his claim, he noted that he retired from the employing establishment as a U.S. Marshal in February 1993 but returned to employment as a federal court security officer. Appellant described his noise exposure while working from January 1970 to the

present and submitted the results of audiograms obtained by the employing establishment from 1996 to 2003.

By letter dated August 25, 2004, the Office referred appellant, together with a statement of accepted facts, to Dr. Antonio C. Andrade, an otolaryngologist, for an evaluation to determine whether he had an employment-related loss of hearing. On September 17, 2004 Dr. Andrade evaluated appellant and obtained an audiogram. He noted appellant's complaints of difficulty understanding conversations and persistent ringing in his ears. Dr. Andrade diagnosed bilateral sensorineural hearing loss due to noise exposure in the course of appellant's federal employment. He reviewed the audiogram and opined that it revealed a 1.8756 percent hearing loss in the left ear and no ratable hearing loss in the right ear. Dr. Andrade recommended hearing aids.

An Office medical adviser reviewed Dr. Andrade's report and calculated that appellant had a two percent ratable hearing loss in the left ear. He used Dr. Andrade's September 17, 2004 audiogram as it met the Office's standards, was the most recent and was obtained from the referral physician. The Office medical adviser noted that appellant's employment-related noise exposure was "sufficient to implicate it as a contributing factor" in his hearing loss.

In a decision dated November 22, 2004, the Office accepted appellant's claim for hearing loss on the left side.¹

By decision dated September 30, 2005, the Office granted appellant a schedule award for a two percent monaural hearing loss. The period of the award ran for 1.04 weeks from September 17 to 24, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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 a determination is a matter which rests in the sound discretion of the Office. For consistent results and to insure 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*, (5th ed. 2001) (A.M.A., *Guides*), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second the

¹ It is unclear why the Office accepted only left-sided hearing loss given the opinion of the Office referral physician that appellant had bilateral sensorineural hearing loss due to noise exposure in the course of his federal employment. Appellant, however, has not appealed this decision and therefore it is not before the Board at this time.

² 5 U.S.C. §§ 8101-8193.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250.

losses at each frequency are added up and averaged.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, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the September 17, 2004 audiogram by Dr. Andrade.⁹ Testing for the right ear at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 20, 20 and 35, respectively. These decibel losses were totaled at 90 and divided by 4 to obtain the average hearing loss per cycle of 22.5. The average of 22.5 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear.¹⁰ The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 20, 25 and 50, respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by the 25 decibel fence to equal 1.25 decibels for the left ear. The 1.25 was multiplied by 1.5 resulting in a 1.875 percent loss for the left ear. The Office medical adviser properly rounded up to find a two percent monaural loss for the left ear.¹¹

The Board finds that the Office medical adviser applied the proper standards to the findings in Dr. Andrade's September 17, 2004 report and accompanying audiogram performed on his behalf. The result is a two percent monaural loss in the left ear and a zero percent monaural hearing loss in the right ear.¹² The Office medical adviser properly relied upon the

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ While the record contains prior audiograms taken by the employing establishment, there is insufficient information accompanying the audiograms to demonstrate that they meet the Office's standards for audiograms used in the evaluation of permanent hearing impairments. See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹⁰ 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.

¹¹ The Office rounds the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

¹² To determine the binaural hearing loss, the lesser loss, in this case 0, is multiplied by 5 and added to the greater loss, in this case, 1.75, and divided by 6. Appellant has a zero percent binaural hearing loss.

September 17, 2004 audiogram as it was part of Dr. Andrade's evaluation and met all the Office's standards.¹³

On appeal, appellant contends that he should receive additional compensation for his hearing loss. The schedule award provision of the Act specifies the number of weeks of compensation to be awarded for loss of hearing. For total loss of hearing in one ear, the Act provides for 52 weeks of compensation.¹⁴ Any loss less than a total loss is compensated at a proportionate rate, so a 2 percent monaural hearing loss equals 1.04 weeks of compensation or 2 percent of 52 weeks.¹⁵

CONCLUSION

The Board finds that appellant has no more than a two percent permanent loss of hearing in the left ear for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2005 is affirmed.

Issued: February 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹⁴ 5 U.S.C. § 8107(c)(13).

¹⁵ On his claim form, appellant alleged that he experienced tinnitus. The fifth edition of the A.M.A. *Guides* provides for an additional award of up to five percent for tinnitus that affects the performance of the activities of daily living. A.M.A., *Guides* 246. In this case Dr. Andrade discussed appellant's complaints of ringing in the ears but did not specifically diagnose tinnitus or find that he had impairment due to tinnitus. It is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. *David W. Ferrall*, 56 ECAB ___ (Docket No. 04-2142, issued February 23, 2005).