

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

C.T., Appellant)

and)

DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF INVESTIGATION, Tampa, FL,)
Employer)

**Docket No. 06-2120
Issued: January 23, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 23, 2006 merit decision denying his claim for schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was entitled to a schedule award for hearing loss.

FACTUAL HISTORY

On December 27, 2005 appellant, then a 58-year-old retired special agent, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to hazardous noise at work since 1976, including noise from small arms and shoulder weapons. Appellant retired from the employing establishment effective August 31, 2001.

Appellant submitted the results of several audiograms obtained between 1999 and 2003 which showed minimal hearing deficits at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.¹ A number of the audiograms were not certified by a physician as accurate.

In March 2006 the Office referred appellant for otologic and audiologic testing to Dr. Randall C. LaTorre, a Board-certified otolaryngologist, who reported the findings of the testing obtained on April 11, 2006 which showed decibel losses of 15, 25, 20 and 30 respectively in the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and decibel losses of 20, 20, 20 and 15 respectively in the left ear at the same levels. Dr. LaTorre determined that appellant had a high frequency sensorineural hearing loss which was related to exposure to noise at work.

The Office accepted that appellant sustained a noise-induced hearing loss due to exposure to noise at work. On April 28, 2006 the Office medical adviser evaluated the findings of Dr. LaTorre and determined that appellant had no ratable hearing loss.

By decision dated August 23, 2006, the Office determined that appellant was not entitled to a schedule award for hearing loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ 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.⁶ 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.⁷ The remaining

¹ None of the losses at these frequency levels were greater than 5 or 10 decibels.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ A.M.A., *Guides* 224-25 (4th ed. 1993); 226-51 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

On April 28, 2006 the Office medical adviser reviewed the otologic and audiologic testing performed on April 11, 2006 by Dr. LaTorre, a Board-certified otolaryngologist and Office referral physician, and applied the Office's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 25, 20 and 30 respectively. These decibel losses were totaled at 90 decibels and were divided by 4 to obtain the average hearing loss of 22.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 20, 20 and 15 respectively. These decibel losses total 75 decibels and when divided by 4 result in an average hearing loss of 18.75 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a figure less than 0. The Office medical adviser concluded that appellant had no ratable hearing loss.

The Board finds that the calculations of the Office medical adviser were carried out in accordance with the relevant standards of the A.M.A., *Guides*. The Office medical adviser properly selected the April 11, 2006 testing of Dr. LaTorre for evaluation.¹¹ For these reasons, the Office properly determined that appellant was not entitled to a schedule award for hearing loss.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to a schedule award for hearing loss.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹¹ Appellant submitted the results of several audiograms obtained between 1999 and 2003, but the audiograms showed deficits at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second which were less than those found in the April 11, 2006 audiogram. A number of the audiograms were not certified by a physician as accurate and the Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 23, 2006 decision is affirmed.

Issued: January 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board