

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

W.H., Appellant

and

**U.S. MARINE CORPS, Camp LeJeune, NC,
Employer**

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**Docket No. 08-784
Issued: July 18, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2008 appellant filed a timely appeal from a September 7, 2007 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a six percent monaural hearing loss of his left ear, for which he received a schedule award.

FACTUAL HISTORY

On September 18, 2006 appellant, a 58-year-old pipe fitter and maintenance worker, filed a claim, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. A statement of accepted facts dated March 27, 2007 indicated that appellant was exposed to hazardous noise from 1971 to 2005 from high pressure steam in mechanical rooms and boiler rooms. Appellant retired from the employing establishment on May 31, 2005.

In an audiologic and otologic evaluation dated April 17, 2007, Dr. George M. Brinson, a specialist in otolaryngology, noted findings based on an April 17, 2007 audiogram. At the frequencies of 500, 1,000, 2,000, and 3,000 hertz, the following thresholds were reported: left ear -- 25, 20, 20 and 50 decibels; right ear -- 20, 15, 15 and 45 decibels. Based on these findings, Dr. Brinson concluded that appellant had a hearing loss of six percent in his left ear with no ratable loss in his right ear.

In a memorandum dated May 30, 2007, an Office medical adviser reviewed Dr. Brinson's audiogram results determined that appellant had a six percent left-sided monaural hearing loss.

On September 7, 2007 the Office granted appellant a schedule award for a six percent monaural hearing loss to the left ear for the period April 17 to May 8, 2007, a total of 3.12 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and the implementing federal regulation² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁶ 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 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.⁷

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.304.

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁶ A.M.A., *Guides* 250 (5th ed. 2001).

⁷ *Id.* See also *Danniel C. Goings*, *supra* note 3.

ANALYSIS

The Board finds that appellant has no more than six percent monaural hearing loss to his left ear, for which he received a schedule award. Dr. Brinson's April 17, 2007 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported for the left ear -- 25, 20, 20 and 50 decibels. These decibels totaled to 115 and divided by 4, obtain an average hearing loss at those cycles of 28.75 decibels. The average of 28.75 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 3.75 decibels, which when multiplied by the established factor of 1.5 totals a 5.63 percent hearing loss in the left ear. This loss was rounded to total six percent loss in the left ear.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 15, 15 and 45 respectively. These decibels amounted to 95, which, when divided by 4, obtains an average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals negative 1.25, which when multiplied by the established factor of 1.5 amounts to a nonratable hearing loss in the right ear. The Office medical adviser correctly determined that appellant had a six percent monaural hearing loss in his left ear. The Office properly granted him a schedule award on September 7, 2007 for this loss.

There is no other probative medical evidence of record establishing that he sustained any greater impairment.⁸

CONCLUSION

The Board finds that appellant has no more than a six percent monaural hearing loss of his left ear.

⁸ The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. 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. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 2008
Washington, DC

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

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

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