

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

J.H., Appellant

and

**TENNESSEE VALLEY AUTHORITY,
FOSS OPS, Gallatin, TN, Employer**

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**Docket No. 07-2304
Issued: March 6, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2007 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 20, 2007 denying his claim for a schedule award. Pursuant to 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 a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On May 24, 2006 appellant, then a 56-year-old boilermaker and fossil mechanic filed a claim for occupational disease claiming that he sustained a hearing loss due to factors of his employment. Audiology reports were submitted.

By decision dated August 23, 2006, the Office denied appellant's claim for hearing loss on the grounds that the evidence did not establish that the medical condition resulted from the accepted events.

This case has been before the Board on prior appeal.¹ On April 6, 2007 the Board remanded the claim to the Office, instructing the Office to refer appellant for a medical examination to determine whether his hearing loss was causally related to his employment. The facts of the prior decision are hereby incorporated by reference.

On May 10, 2007 an audiology examination was performed which determined that the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz (Hz) for the right ear revealed decibel losses of 20, 15, 15 and 30, respectively and for the left ear revealed decibel losses of 75, 75, 60 and 65. On May 10, 2007 Dr. James Fordice, Board-certified in otolaryngology, evaluated appellant and diagnosed bilateral sensorineural hearing loss. He opined that the hearing loss was due to noise exposure encountered in appellant's federal employment and stated that "right-sided loss is consistent with history of heavy exposure. Left-sided loss is far too severe to be explained by noise exposure history. Portion of left loss equal to right loss, minus left loss present in 1990 is logically attributable to work noise." Dr. Fordice also opined that workplace exposure was not sufficient to cause the entire hearing loss on the left side and that appellant's military history and potential nonfederal occupational exposure caused part of the hearing loss. He recommended hearing aids and hearing protection around noise.

On May 15, 2007 the district medical adviser reviewed the audiometric test and found that appellant had a 65.625 percent loss in the left ear and diagnosed bilateral sensorineural hearing loss but recommended a schedule award of 0 percent, noting that the second opinion physician found the hearing loss to be too severe to be explained by noise exposure. The district medical adviser did not authorize hearing aids.

On May 17, 2007 the Office accepted appellant's claim for hearing loss due to noise bilateral sensorineural. On June 8, 2007 appellant filed a schedule award claim.

On June 25, 2007 the Office denied appellant's schedule award finding that his hearing loss was not severe enough to be ratable.

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 determination is a matter which results in the sound discretion of the Office. 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*

¹ Docket No. 07-330 (issued April 6, 2007).

² 5 U.S.C. §§ 8101-8193.

Permanent Impairment (A.M.A., *Guides*) (5th ed. 2001), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

Section 8107(c)(19) of the Act provides that the degree of loss of vision or hearing under this schedule is determined without regard to correction.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 The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

In order to establish a work-related loss of hearing, the Office requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngologist and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Office procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report must include: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.¹⁰

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

⁴ 5 U.S.C. § 8107(c)(19).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994); see also *Luis M. Villanueva*, 54 ECAB 666 (2003).

ANALYSIS

The Board finds that the Office did not properly assess the ratability of appellant's hearing loss. The Office accepted that he has bilateral sensorineural hearing loss due to noise. By accepting the claim the Office has accepted that appellant's hearing loss is causally related to his federal employment. Once the Office accepts a claim it has a duty to assess the ratability of a schedule award claim. When assessing the percentage of impairment those conditions accepted by the Office as job related and any preexisting permanent impairment of the same member are included.¹¹

In refusing to assess the ratability of hearing loss by using the standards contained in the A.M.A., *Guides* (fn4) the Office is effectively rescinding the acceptance of the claim, without issuing a rescission decision.

In appellant's May 10, 2007 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz for the right ear reveal decibel losses of 20, 15, 15 and 30, respectively, for a total of 80 decibels. This figure when divided by 4 results in an average hearing loss of 20 decibels. The average loss of 20 is reduced by 25 decibels to zero, which was multiplied by the established factor of 1.5 to compute a zero percent impairment in the right ear which represents a 0 percent ratable 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 Hz revealed decibel losses of 75, 75, 60 and 65 decibels respectively, for a total of 275 decibels. Utilizing the above-noted formula, results in a 65.625 percent monaural hearing loss for the left ear. In order to calculate the binaural hearing loss the smallest hearing loss percentage, 0 percent for the right ear, is multiplied by 5, then added to the left ear percentage of 66 and divided by 6. Accordingly, appellant's most recent audiogram establishes a ratable binaural hearing loss of 11 percent.

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation. Since the binaural hearing loss in this case is 11 percent, appellant would be entitled to eleven percent of 200 weeks or 22 weeks of compensation. It is well established, however, that, if calculations based on the monaural hearing loss would result in greater compensation, then the monaural hearing loss calculations should be used.¹² The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks.¹³ The Board finds that the hearing loss in the right ear was 0 percent and in the left ear was 65.625 percent. Rounding to the next whole number, the monaural loss in the left ear is 66 percent.¹⁴ Sixty-six percent of 52 weeks is 34.32 weeks of compensation which is more than the 22 weeks awarded

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.700.3(a)(3) (October 1990).

¹² FECA Program Memorandum No. 181 (issued November 26, 1974). *See Joseph J. Tillo*, 39 ECAB 1345, 1348 (1988); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹³ 5 U.S.C. § 8107(c)(13)(A).

¹⁴ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (March 2005).

for binaural hearing loss therefore appellant is entitled to a total of 34.32 weeks of compensation. The Board therefore finds that appellant is entitled 34.32 weeks of compensation.

As the record establishes that appellant has a ratable hearing loss in his left ear, the Board finds that the January 18, 2007 decision of the Office should be reversed and remanded for the issuance of a schedule award.

CONCLUSION

The Board finds that appellant has established that he is entitled to a schedule award for his employment-related hearing loss and hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 25, 2007 is reversed and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: March 6, 2008
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