

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

V.C., Appellant

and

**DEPARTMENT OF THE ARMY, CORPUS
CHRISTI ARMY DEPOT, Corpus Christi, TX,
Employer**

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**Docket No. 08-1347
Issued: October 17, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 7, 2008 appellant timely appealed the March 19, 2008 merit decision of the Office of Workers' Compensation Programs, which determined that he was not entitled to a schedule award because he did not have a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award issue.

ISSUE

The issue is whether appellant has a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On September 26, 2007 appellant, then a 57-year-old machinist, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his employment. He submitted audiogram reports dated May 9, 1985 through January 26, 2007. None of the audiograms were signed or certified by a physician.

The Office referred appellant to Dr. Paul W. Loeffler, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on February 18, 2008 which reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 25, 20, 20 and 25 respectively, and on the right of 15, 20, 15 and 30 respectively. Based upon his examination and the results of the audiogram, Dr. Loeffler diagnosed sensorineural hearing loss and tinnitus. He stated that the pattern and frequency of exposure was compatible with employment-related noise exposure and was more than would be expected from presbycusis. Dr. Loeffler also indicated that appellant would benefit from hearing aids.¹

On March 5, 2008 the district medical adviser reviewed Dr. Loeffler's report and the February 18, 2008 audiogram results and used them to calculate appellant's impairment rating pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He stated that appellant had a binaural hearing loss and that work-related noise exposure was sufficient to implicate it as a contributing factor in the loss. However, the district medical adviser concluded that appellant had a zero percent impairment and, therefore, did not have a ratable hearing loss.

On March 19, 2008 the Office accepted appellant's claim for bilateral hearing loss due to employment-related noise exposure. However, it found that he was not entitled to a schedule award, in that his loss was not severe enough to be considered ratable under the A.M.A., *Guides*.

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.² 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁵ 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

¹ The Board notes that Dr. Loeffler's second opinion report was dated February 15, 2008. However, the content of his report indicates he reviewed and analyzed the above-referenced audiogram, which was dated February 18, 2008.

² The Act provides that for complete, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

³ 20 C.F.R. § 10.404 (2006).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

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

everyday speech under everyday conditions.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, and then added to the greater loss, and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸

ANALYSIS

In support of his claim for an employment-related hearing loss, appellant submitted reports of audiograms dated May 9, 1985 through January 26, 2007. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing. The audiograms were not certified by a physician as being accurate. The Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist.⁹

The Office referred appellant for a second opinion examination by Dr. Loeffler, a Board-certified otolaryngologist. After reviewing Dr. Loeffler's report and the February 18, 2008 audiogram, the Office medical adviser correctly applied the Office's standardized procedures to the audiogram results. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 15 and 30 respectively. These decibel losses were totaled at 80 and divided by 4 to obtain the average hearing loss per cycle of 20. The average of 20 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the right ear. The 0 was multiplied by the 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 20, 20 and 25 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 left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Office medical adviser properly found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides*.

The Board finds that the Office medical adviser applied the proper standards to the February 18, 2008 audiogram. The result is a nonratable hearing loss bilaterally.¹⁰

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁰ To determine the binaural hearing loss, the lesser loss is multiplied by five and added to the greater loss and divided by six. Appellant has a zero percent binaural hearing loss.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.¹¹

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ The issue of appellant's entitlement to hearing aids was not addressed by the Office and is, therefore, not before the Board.