

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

J.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 11-71
Issued: July 20, 2011**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2010 appellant, through his representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) schedule award decision dated June 15, 2010. Pursuant to the Federal Employees' Compensation Act¹ and 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 12 percent binaural hearing loss, for which he received a schedule award.

FACTUAL HISTORY

Appellant, then a 61-year-old postal transportation supervisor, filed an occupational disease claim (Form CA-2) on March 19, 2008, alleging that he sustained a hearing loss caused by factors of his federal employment. He was exposed to loud noise caused by heavy machinery

¹ 5 U.S.C. § 8101 *et seq.*

and trucks while working as a mail carrier, distribution clerk and transportation supervisor beginning 1966 to the present time. Appellant submitted a September 26, 2007 report from Dr. Lawrence V. Cramer, an osteopathic otolaryngologist, who found that appellant had sustained a severe bilateral sensorineural hearing loss. An audiogram which accompanied the report purportedly indicated that appellant had sustained a 17 percent bilateral hearing loss.

OWCP referred appellant to Dr. Emil Liebman, a Board-certified otolaryngologist, for a second opinion evaluation. In a November 21, 2008 report, Dr. Liebman discussed the results of a September 26, 2008 audiogram, which revealed sensorineural hearing loss. An audiogram dated September 26, 2008, with an attached calibration certificate, showed hearing levels of 20, 20, 30 and 65 decibels on the right and 20, 20, 30 and 65 decibels on the left at 500, 1000, 2000 and 3000 hertz, respectively. Dr. Liebman opined that the results of the audiogram suggested a noise-induced hearing loss.

In a November 28, 2008 report, OWCP's medical adviser reviewed the results of the September 26, 2008 audiogram. He determined that appellant had a 12 percent bilateral hearing loss pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*).

By decision dated December 8, 2008, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On July 15, 2009 OWCP's medical adviser stated that appellant's hearing loss needed to be recalculated under the sixth edition of the A.M.A., *Guides*.

In a September 25, 2009 report, OWCP's medical adviser, again reviewed the September 26, 2008 audiogram, to rate a 12 percent bilateral hearing loss pursuant to the sixth edition of the A.M.A., *Guides*.

By decision dated December 17, 2009, OWCP granted appellant a schedule award for a 12 percent bilateral hearing loss. The period of the award ran from September 26, 2008 to March 12, 2009, for a total of 24 weeks of compensation.

By letter dated March 30, 2010, appellant's attorney requested a review of the written record. He contended that there was a conflict in the medical evidence between Drs. Liebman and Cramer regarding the extent of appellant's work-related hearing loss.

By decision dated June 15, 2010, OWCP's hearing representative affirmed the December 17, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

OWCP 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 hertz, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. 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 OWCP's adoption of this standard for evaluating hearing loss.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has no more than a 12 percent bilateral hearing loss, for which he received a schedule award. Dr. Liebman's September 26, 2008 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported for the right ear 20, 20, 30 and 65 decibels. These decibels, totaled to 135 and divided by 4, obtained an average hearing loss at those cycles of 33.75 decibels. The average of 33.75 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 8.75, which when multiplied by the established factor of 1.5 amounts to a 13.3 percent loss in the right ear.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 – Medical, *Schedule Awards*, Chapter 2.700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (4) (March 2010); see also *J.H.*, 59 ECAB 377 (2008).

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 20, 30 and 60 respectively. These decibels amounted to 130, which when divided by 4, obtained an average hearing loss at those cycles of 32.50 decibels. The average of 32.50 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 7.50 decibels, which when multiplied by the established factor of 1.5 computes a 11.56 percent hearing loss in the left ear. To calculate the binaural loss, the lesser loss of 11.56 is multiplied by 5 to equal 57.80 decibels and is then added to the greater loss of 13.3 decibels to equal 71.10 decibels. This sum is then divided by 6 to obtain the binaural hearing loss of 12 percent. The Board also notes that 12 percent of the maximum allowable weeks of compensation for binaural loss, 200, results in 24 weeks of compensation. The binaural award yields greater compensation as the maximum monaural loss is 52 weeks of compensation, which when multiplied by the monaural loss values only equals 13 weeks of compensation. OWCP's medical adviser correctly determined that appellant had a 12 percent bilateral hearing loss, for which OWCP awarded him a schedule award on December 17, 2009.

Following the December 17, 2009 decision appellant requested a review of the written record. While appellant's attorney contends that Dr. Cramer's September 26, 2007 report and audiogram created a conflict in the medical evidence, this audiogram did not contain the information necessary to establish that it met the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association.¹¹ The Board therefore affirms the June 15, 2010 decision, as there was no other probative evidence in the record establishing that appellant sustained any greater impairment.¹²

CONCLUSION

The Board finds that OWCP properly applied the applicable standards of the A.M.A., *Guides* to determine that appellant was entitled to a 12 percent bilateral award for his work-related hearing loss.

¹¹ See *supra* note 10.

¹² *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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