

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD E. STOCKSTAD and DEPARTMENT OF THE AIR FORCE,  
THE ADJUNCT GENERAL, TRUAX AIR NATIONAL GUARD, Madison, WI

*Docket No. 01-1570; Submitted on the Record;  
Issued January 23, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained greater than a six percent permanent loss or loss of use of the left ear for the period October 24 to November 14, 2000 for which he received a schedule award.

On March 28, 2000 appellant, then a 58-year-old aircraft mechanic, filed a notice of occupational disease (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. Appellant indicated that he first became aware of his hearing loss and its relation to his federal employment on May 17, 1995. The Office of Workers' Compensation Programs accepted the claim for bilateral hearing loss and tinnitus as a result of his work-related exposure. Appellant retired from federal employment on January 20, 2000.

On November 14, 2000 appellant filed a claim for a schedule award for hearing loss and submitted audiograms performed during his employment dated August 15, 1981, September 11 and November 1, 1991, March 18, 1998, May 14, 1999 and January 18, 2000 in support of his claim.

On October 4, 2000 the Office referred appellant to Dr. James Harrison, a Board-certified otolaryngologist, for audiometric testing and otologic evaluation. Dr. Harrison submitted a report dated October 24, 2000, with an accompanying audiogram made on the same day. He stated that appellant gave a history of working on jet engines for a 30- to 40-year period with the employing establishment and was exposed to loud engine noise. The audiogram performed October 24, 2000 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following: right ear 25, 20, 15 and 25 decibels; left ear 30, 20, 20 and 45 decibels. Dr. Harrison said that the audiogram showed a bilateral high frequency sensorineural loss, which was slightly worse in the left ear and opined that the noise-induced hearing loss was encountered during his employment.

An Office medical adviser reviewed Dr. Harrison's report and audiometric test results and concluded that appellant had a low binaural sensorineural hearing loss or a six percent loss on the left and that appellant's date of maximum medical improvement was October 24, 2000. He further stated that without a preemployment audiogram, it was impossible to definitively determine whether there was any preexisting hearing loss, however, that there was a significant amount of hearing loss reflected in the October 24, 2000 audiogram as compared to the completed audiogram on August 15, 1981. The Office medical adviser then determined that given the work-related exposure, it was probable that at least some of appellant's current hearing impairment was work related. After applying the Office's current standards for evaluating hearing loss to the results of the October 24, 2000 audiologic tests, the Office medical adviser determined that appellant had a one percent binaural sensorineural hearing loss.

On February 15, 2001 the Office granted appellant a schedule award for a six percent loss of hearing in the left ear. The Office noted that the medical adviser for the Office stated in his memorandum that appellant had a one percent bilateral hearing loss or a six percent hearing loss in his left ear. The Office then determined that the compensation amount for each of those losses were compared and the loss of hearing in his left ear gave him a higher compensation amount and therefore the higher rating was awarded. The period of the award ran for 3.12 weeks from October 24 to November 14, 2000.

The Board finds that appellant has no more than a six percent permanent loss or loss of use of the left ear; however, the Office improperly determined the period of award of October 24 to November 14, 2000 for which he received compensation.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.<sup>1</sup> Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> 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 a determination is a matter which rests in the sound discretion of the Office.<sup>3</sup> However, as a matter of administrative practice, the Board has stated: "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."<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Id.* at § 8107(c)(19).

<sup>3</sup> *Andrew Arron, Jr.*, 48 ECAB 141 (1996).

<sup>4</sup> *Id.*

<sup>5</sup> A.M.A., *Guides* at 246, 247 (5<sup>th</sup> ed. 2001).

are added up and averaged.<sup>6</sup> 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.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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.<sup>9</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>10</sup>

The Office medical adviser applied the Office’s standardized procedures to the October 24, 2000 audiogram performed for Dr. Harrison. Testing for the left ear revealed decibel losses of 30, 20, 20 and 45 respectively. These decibel losses were totaled at 115 and divided by 4 to obtain the average hearing loss at those cycles of 28.75. The average of 28.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 3.75 decibels for the left ear. The 3.75 was multiplied by 1.5 resulting in a 5.6 loss. The 5.6 loss was properly rounded up to a 6 percent monaural (left ear) loss.<sup>11</sup> Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 20, 15 and 25 decibels respectively. These decibel losses were totaled at 85 decibels and divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear.<sup>12</sup> Accordingly, pursuant to the Office’s standardized procedures, the Office medical adviser determined that appellant had a six percent monaural loss of hearing in his left ear and a nonratable loss of hearing in his right ear.

Initially the Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Harrison’s October 24, 2000 report and the accompanying audiometric evaluation with the same date that Dr. Harrison reviewed. This resulted in a calculation of a six percent monaural hearing loss in the left ear. The right ear was not ratable under these standards and, therefore, not compensable.

On appeal, appellant contends that the Office’s decision indicated that, although a date of injury was given as May 17, 1995, he was being awarded compensation only from “October 24 to November 14, 2000” when he actually suffered a lifetime injury which was permanent. The

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

Board notes that the Office used the date of May 17, 1995 as the date of injury because appellant reported that date as the date of injury in his March 28, 2000 claim for compensation. However, the Board has stated that in cases of occupational disease such as hearing loss the date of injury is the date that appellant was last exposed to the factors of employment that caused his condition if appellant is aware before that time that his condition is related to his employment.<sup>13</sup>

In this case, appellant noted that he was initially aware of his hearing loss and that it was caused by his employment on May 17, 1995, prior to his retirement on January 20, 2000. The Board notes, however, as explained above, appellant's date of injury is the date of his retirement, January 20, 2000. An examination of the record shows that the Office used appellant's pay rate at the time which maximum medical improvement was determined to calculate his schedule award compensation. The weeks of compensation calculated in appellant's schedule award should have been from the date of last exposure or appellant's retirement. Therefore, the Office erred in determining October 24, 2000 as the date his rate of pay should begin for purposes of calculating appellant's schedule award.

The decision of the Office of Workers' Compensation Programs dated February 15, 2001 is affirmed with respect to the degree and nature of permanent disability and reversed with respect to the period of schedule award.

Dated, Washington, DC  
January 23, 2002

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>13</sup> *Augustin Avila*, Docket No. 00-106 (issued October 16, 2000).