

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JASPER A. BYERS and DEPARTMENT OF THE AIR FORCE,
McCLELLAN AIR FORCE BASE, CA

*Docket No. 02-1521; Submitted on the Record;
Issued November 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a two percent monaural hearing loss in the left ear for which he received a schedule award.

On May 2, 2001 appellant, then a 43-year-old electronic integrated systems mechanic, filed an occupational disease claim alleging that he sustained hearing loss and a constant ringing in his ears due to factors of his federal employment.

By letter dated June 22, 2001, the Office of Workers' Compensation Programs referred appellant to Dr. Stuart Gherini, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated July 18, 2001, Dr. Gherini diagnosed "[b]ilateral moderate, noise-induced high frequency sensorineural hearing loss" and "[b]ilateral tinnitus" due to the hearing loss. Dr. Gherini opined that appellant's hearing loss was a "work-related injury due to cumulative trauma, that is, cumulative exposure to hazardous levels of noise." He found that appellant had no disability or work restrictions due to his hearing loss but did require hearing protection. Dr. Gherini further noted that appellant might benefit from a hearing aid in his left ear. Dr. Gherini reviewed a July 18, 2001 audiogram and found that appellant had no ratable impairment in the right ear and a 1.9 percent ratable impairment in the left ear.

By letter dated August 2, 2001, the Office informed appellant that it had accepted his claim for binaural hearing loss and authorized a visit to an audiologist to determine whether he needed a hearing aid.

On September 13, 2001 an Office medical consultant reviewed Dr. Gherini's July 18, 2001 report and audiogram. He found that appellant had a two percent monaural loss of hearing in his left ear.

By decision dated October 26, 2001, the Office granted appellant a schedule award for a two percent permanent impairment of the left ear. The period of the award ran for 1.04 weeks from July 18 to July 25, 2001.

In a letter received by the Office on November 9, 2001, appellant requested reconsideration of his claim. In support of his request, appellant submitted an October 7, 1997 report and audiogram. Appellant further expressed concern about the tinnitus in his ears.

On January 9, 2002 an Office medical consultant reviewed the 1997 report and audiogram and determined that the 1997 audiogram showed no ratable impairment bilaterally.

By decision dated January 24, 2002, the Office denied modification of its prior decision. The Office further noted, in response to appellant's inquiry regarding his tinnitus, that it had accepted appellant's claim for binaural hearing loss with tinnitus.

The Board finds that appellant has no more than a two percent monaural hearing loss in the left ear.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Associations, *Guides to the Evaluation of Permanent Impairment*.¹ 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.² 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.³ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁴ 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.⁵ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁶

The Office medical consultant applied the Office's standardized procedures to the July 18, 2001 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 20, 20 and 40, respectively. These decibels were totaled at 100 and divided by 4 to obtain the average hearing loss of 25 decibels. The average loss was reduced by the 25 decibels fence to equal 0, which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 25, 15, 25 and 40, respectively. These decibels were totaled at 105 and divided by 4 to obtain the average hearing loss of 26.25 decibels. The average loss was reduced by the 25 decibel fence to equal 1.25, which was multiplied by the established factor 1.5

¹ A.M.A., *Guides* at 250 (5th ed. 2001).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002).

to compute a 1.9 percent monaural loss for the left ear, which was rounded up for a 2 percent monaural loss in the left ear.⁷

Appellant has not submitted any evidence establishing that he is entitled to a schedule award for more than a 2 percent monaural hearing loss in his left ear. The Office medical adviser reviewed the October 7, 1997 audiogram submitted by appellant in support of his request for reconsideration and found that it did not show a ratable impairment in either the right or left ears. Regarding appellant's tinnitus, which the Office accepted as employment related, the A.M.A., *Guides* allows for an award for tinnitus "if the tinnitus impacts the ability to perform activities of daily living."⁸ However, in this case Dr. Gherini found that appellant's tinnitus was "minimal" in nature. Therefore, the medical evidence does not establish that appellant is entitled to an additional schedule award for tinnitus. Appellant would also be entitled to compensation if he established that his tinnitus caused a loss of wage-earning capacity; however, Dr. Gherini found that appellant had no work restrictions "with respect to the ears and hearing."⁹

Accordingly, appellant has established no more than a two percent monaural hearing loss in his left ear. A schedule award under the Federal Employees' Compensation Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed by statute.¹⁰ With respect to schedule awards for hearing impairments, the Act provides that for a total or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks of compensation.¹¹

In this case, appellant has a 2 percent loss of use of the left ear and therefore he is entitled to 2 percent of 52 weeks of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks for which appellant is entitled to compensation under the schedule award provisions of the Act.

⁷ The Office medical adviser next took the lesser of the two monaural losses, the 0 percent in the right ear and multiplied it by the established factor of 5 and added it to the 1.9 percent loss in the left ear and divided this figure by 6 to arrive at a 0 percent binaural hearing loss.

⁸ A.M.A., *Guides* at 246.

⁹ See *Leonard J. Dragon, Sr.*, 48 ECAB 481 (1997).

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(13)(A).

The decisions of the Office of Workers' Compensation Programs dated January 24, 2002 and October 26, 2001 are hereby affirmed.

Dated, Washington, DC
November 8, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member