

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROYCE E. KELLEY and TENNESSEE VALLEY AUTHORITY,  
BROWNS FERRY NUCLEAR PLANT, Decatur, AL

*Docket No. 03-1164; Submitted on the Record;  
Issued November 5, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 36 percent binaural loss of hearing for which he received a schedule award.

On March 9, 2001 appellant, then a 61-year-old steamfitter, filed an occupational disease claim alleging that he sustained permanent hearing loss for which he attributed to factors of his employment. Appellant stated that he first became aware of his condition and realized that it was caused or aggravated by his employment sometime in 1982. Accompanying the claim were appellant's work history, sources of noise exposure, employing establishment audiograms and a May 3, 2001 letter of controversion from the employing establishment.<sup>1</sup>

On May 23, 2001 the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Sage Copeland, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant. In a report dated June 21, 2001, Dr. Copeland noted audiological findings based on an audiogram of the same date. At the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the following thresholds were reported: right ear -- 40, 45, 65 and 70 decibels: left ear -- 35, 35, 50 and 60 decibels respectively. Based on these findings, Dr. Copeland concluded that appellant had a moderate to severe sensorineural hearing loss caused by employment-related noise exposure and recommended hearing protection.

In a memorandum dated July 6, 2001, an Office medical adviser, relying on Dr. Copeland's audiogram results and calculations, determined that appellant had a 36 percent binaural hearing loss.

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<sup>1</sup> In the letter, the employing establishment expressed concern that appellant was alleging hearing loss as he only worked for them for less than three years intermittently from July 24, 1968 to February 1, 1982 and had since worked for private employers. Further, they advised that hearing protection was mandatory and provided.

On July 8, 2002 the Office accepted that appellant sustained bilateral sensorineural hearing loss. In a decision dated August 12, 2002, the Office granted appellant a schedule award for a 36 percent binaural hearing loss, for a total of 72 weeks of compensation, to run from June 21, 2001 to November 6, 2002.<sup>2</sup>

The Board finds that appellant has not established that he has more than a 36 percent binaural loss of hearing for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>3</sup> provide for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.<sup>4</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. 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 Permanent Impairment*<sup>5</sup> (hereinafter A.M.A., *Guides*) has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.<sup>6</sup>

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 cps. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deduced since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>7</sup> Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. 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 binaural hearing loss.<sup>8</sup>

In this case, on July 6, 2001 the Office medical adviser reviewed the otologic and audiological testing performed on June 21, 2001 by Dr. Sage Copeland, a Board-certified otolaryngologist, to whom the Office referred appellant and applied the Office's standardized procedures to the evaluation.<sup>9</sup> Testing for the left ear at frequency levels of 500, 1,000, 2,000

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<sup>2</sup> The Board notes that the schedule award contains a typographical error, stating that the number of weeks of compensation was 36 weeks. The time frame of the award, from June 21, 2001 to November 6, 2002, is correct, indicating that appellant was to receive 72 weeks of compensation.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 5.

<sup>7</sup> A.M.A., *Guides*, *supra* note 5 at 250.

<sup>8</sup> *Id.*; see *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>9</sup> *Donald A. Larson*, 41 ECAB 947, 951 (1990).

and 3,000 cps revealed decibel losses of 35, 35, 50 and 70 respectively. These decibel losses were totaled to 190 decibels and were divided by 4 to obtain the average hearing loss of 47.50 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 22.50 which was multiplied by the established factor of 1.5 to compute a 33.75 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 40, 45, 65 and 70 respectively. These decibel losses were totaled at 220 decibels and were divided by 4 to obtain the average hearing loss of 55 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 30 which was multiplied by the established factor of 1.5 to compute a 45 percent hearing loss in the right ear. The Office medical adviser then multiplied the 33.75 percent loss in the left ear by 5, added it to the 45 percent loss in the right ear and divided the sum by 6 to calculate appellant's binaural loss at 35.63 percent, which he rounded up to a 36 percent binaural loss.

The record contains no further evidence on which to base a schedule award. The Board finds that the Office medical adviser properly used the appropriate standards of the A.M.A., *Guides*, to calculate appellant's entitlement to a schedule award for a binaural hearing loss. Consequently, the reliable evidence of record does not establish that appellant has greater than a 36 percent binaural hearing loss, for which he received a schedule award.

On appeal, appellant contends that the schedule award he received was not adequate compensation for his hearing loss and that he is entitled to permanent disability. The Act provides that, for a total, or 100 percent, loss of hearing of both ears, the maximum award is 200 weeks of compensation.<sup>10</sup> Accordingly, the amount payable for a 36 percent binaural loss would be 36 percent of 200 weeks, or 72 weeks of compensation, which is what appellant received. Under the schedule award provisions, he is entitled to no more. Because appellant has been fully compensated for the 36 percent binaural hearing loss and the medical evidence of record does not establish that his condition has worsened under the Office's standards for evaluating hearing loss, he is not entitled to an additional schedule award. Appellant also seems to be generally contending that he is entitled to permanent wage-loss compensation for his accepted condition. The record before the Board does not contain an Office decision regarding his entitlement to wage-loss compensation for permanent disability, and the Board's jurisdiction is limited to review of final decisions issued by the Office within one year prior to the filing of the appeal.<sup>11</sup>

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<sup>10</sup> 5 U.S.C. § 8107(c)(13)(b).

<sup>11</sup> 20 C.F.R. § 501.2(c); *see Thomas J. Engelhart*, 50 ECAB 322 (1999). The Board further notes that, under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act. *Cheryl L. Decavitch*, 50 ECAB 397 (1999). Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence. *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant has not provided any probative medical evidence that he has greater than a 36 percent binaural hearing loss.

The decision of the Office of Workers' Compensation Programs dated August 12, 2002 is hereby affirmed.

Dated, Washington, DC  
November 5, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member