

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD HOWE and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Albany, NY

*Docket No. 03-1292; Submitted on the Record;  
Issued October 6, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

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

On November 4, 1999 appellant, then a 54-year-old maintenance mechanic, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a hearing loss and tinnitus in both ears as a result of working in a noisy machine environment as part of his federal employment. By decision dated April 3, 2000, the Office of Workers' Compensation Programs noted that it accepted appellant's claim for hearing loss due to employment-related exposure, but that, after applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> edition) to the audiometric reports, it determined that the hearing loss was not severe enough to be considered ratable.

Appellant requested a hearing. In further support of his claim, appellant submitted a July 30, 2001 report by Dr. Michael Schrom, a Board-certified otolaryngologist, wherein he indicated, *inter alia*, that appellant's tinnitus was not an objectively measurable complaint, but that it was directly related to his hearing loss which itself was related to his industrial noise exposure. By decision dated October 12, 2001, the hearing representative affirmed the Office's decision.

By letter dated September 14, 2002, appellant requested reconsideration. In support thereof, appellant submitted an audiometric report dated February 4, 2002 and a report by Dr. Schrom of the same date. The Office forwarded these reports to the Office medical adviser on December 19, 2002. The Office medical adviser determined that appellant had a 4.0625 percent binaural hearing loss. By decision dated January 27, 2003, the Office vacated the April 3, 2000 decision and accepted appellant's claim for binaural noise-induced hearing loss and instructed appellant to submit a claim for a schedule award. The Office also indicated that the tinnitus condition was not accepted as related to appellant's employment. Appellant filed a claim for a schedule award on February 3, 2003 and by decision dated March 4, 2003, the Office issued a schedule award for a four percent binaural hearing loss.

The Board has duly reviewed the case record and concludes that appellant did not establish that he had greater than a four percent binaural hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from 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 regulation as the appropriate standard for evaluating schedule losses.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>3</sup> 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.<sup>4</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>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing 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 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural loss.<sup>6</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>7</sup>

In a report dated January 22, 2003, the Office medical adviser reviewed the most recent audiogram of record dated February 4, 2002. He determined that on the February 4, 2002 audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second of the right ear, 15, 15, 15 and 70, respectively, totaled 115 which divided by 4 yielded the average hearing loss at those frequencies of 28.75 decibels. The Office medical adviser reduced the average 28.75 by the 25 decibel "fence" to equal 3.75. He then multiplied 3.75 by the established factor of 1.5 to obtain a monaural loss in the right ear of 5.625 percent.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

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

<sup>5</sup> *Id.*

<sup>6</sup> *Donald E. Stockstad*, 53 ECAB \_\_\_\_ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(2)(a) (September 1994).

The Office medical adviser totaled the decibel losses at the above-mentioned frequencies for the left ear, 10, 10, 25 and 65 respectively, at 110 which he divided by 4 to obtain the average hearing loss at those frequencies of 27.5 decibels. He reduced 27.5 by the 25 decibel “fence” to equal 2.5 which he then multiplied by 1.5 to obtain a monaural loss for the left ear of 3.75 percent. The Office medical adviser then multiplied the 3.75 percent loss in the left ear by 5 as it was the lesser loss, added it to the 5.625 loss in the right ear and divided the sum by 6 to calculate appellant’s binaural loss at 4.0625 percent, which he rounded out to a 4 percent binaural hearing loss. The Office medical adviser properly determined that appellant’s binaural hearing loss was four percent. Appellant has not submitted evidence establishing that his hearing loss was greater than this amount.

The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of monaural or binaural hearing impairment may impair speech discrimination: “Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”<sup>8</sup> The A.M.A., *Guides* advises as follows:

“Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment.”<sup>9</sup>

Dr. Schrom, in his July 30, 2001 report, suggested that appellant had tinnitus related to his hearing loss which itself is related to his industrial noise exposure. However, the Office medical adviser correctly notes that, while Dr. Schrom’s report states that appellant complains of tinnitus and difficulty understanding speech, Dr. Schrom has not documented any permanent impairment due to tinnitus. In fact, Dr. Schrom noted that speech discrimination was excellent. Although appellant complains that his tinnitus is causing difficulty in understanding speech, it is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. Accordingly, the evidence does not support that tinnitus caused or contributed to any greater hearing loss than has already been determined. Accordingly, the Board finds that appellant is not entitled to an additional award for the condition of tinnitus.

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<sup>8</sup> A.M.A., *Guides* at 246 (5<sup>th</sup> ed. 2001).

<sup>9</sup> *Id.* at 246 (5<sup>th</sup> ed. 2001).

The decisions of the Office of Workers' Compensation Programs dated March 4 and January 27, 2003 are hereby affirmed.

Dated, Washington, DC  
October 6, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member