

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE BAYS and DEPARTMENT OF THE ARMY,
U.S. ARMY ENGINEER DISTRICT, Huntington, WV

*Docket No. 03-2017; Submitted on the Record;
Issued October 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for his employment-related bilateral hearing loss.

On April 10, 2002 appellant, then a 48-year-old lock and dam operator, filed an occupational disease claim alleging that his hearing loss was employment related. He stated that he first became aware of his condition and realized that it was caused or aggravated by his employment on August 8, 1990. Appellant did not stop work.

Accompanying the claim were appellant's work history and sources of noise exposure.

By letters dated July 23, 2002, the Office of Workers' Compensation Programs informed appellant of the evidence needed to support his claim. In response, the Office received audiograms dating from June 26, 1985 to May 1, 2002. On August 15, 2002 the Office received a response from appellant describing his employment history and noise exposure. The Office also received a June 17, 2002 report and audiogram, in which an employing establishment's physician, Dr. Joseph B. Touma, a Board-certified otolaryngologist, diagnosed moderate high frequency sensorineural hearing loss, bilateral, indicated that appellant had zero percent disability and advised that he would benefit from bilateral hearing aids.

On August 18, 1990 the Office referred appellant, together with a statement of accepted facts, to Dr. Charles Abraham, a Board-certified otolaryngologist, for a second opinion evaluation.

Dr. Abraham submitted a report detailing his examination on January 9, 2003 with an accompanying audiogram made on the same day.¹ The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following:

¹ The record indicates audiometric testing was completed on January 9, 2003.

right ear 10, 5, 0 and 40 decibels; left ear 15, 15, 0 and 65 decibels. Dr. Abraham diagnosed bilateral high frequency sensorineural hearing loss which he opined were employment related.

In a January 25, 2003 report, an Office medical adviser advised that appellant had bilateral sensorineural hearing loss but the extent of hearing loss measured did not result in a ratable loss for purposes of a schedule award.

By decision dated July 24, 2003, the Office accepted that appellant sustained employment-related hearing loss; however, the Office found that appellant was not entitled to a schedule award as his hearing loss was not ratable.

The Board finds that appellant has not established that he is entitled to a schedule award for his employment-related bilateral hearing loss.

The Federal Employees' Compensation Act² 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.³ Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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.⁵ 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."⁶

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107.

⁴ *Id.* at 5 U.S.C. § 8107(c)(19).

⁵ *Andrew Aaron, Jr.*, 48 ECAB 141 (1996).

⁶ *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁷ 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.⁸ The “fence” of 25 decibels is then 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.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹

In reviewing the January 9, 2003 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 10, 5, 0 and 40 respectively, for a total of 55 decibels. When divided by 4, the result is an average hearing loss of 13.75 decibels, which is less than the fence of 25 decibels. Appellant does not have a ratable hearing loss in 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 15, 15, 0 and 65 respectively, for a total of 95 decibels. When divided by 4, the result is an average hearing loss of 23.75 decibels, which is less than the fence of 25 decibels. Thus, the audiogram does not demonstrate a ratable hearing loss in the left ear.

On appeal, appellant alleged that he clearly had a loss of hearing and it was sorely missed. He argued that he did not understand how he did not receive a schedule award. The Board, however, has long concurred in the Office’s adoption of the standard outlined in the

⁷ A.M.A., *Guides* at 250 (5th ed. 2001). In addition to these standards, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office’s Federal (FECA) Procedure Manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist report must include: date and hour of examination, date and hour of employee’s last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests; *see* Federal (FECA) Procedure Manual, Part 3 -- Requirements for Medical Reports, *Special Conditions*, Chapter 3.600.8(a) (September 1995); *Raymond Van Nett*, 44 ECAB 480 (1993). The procedural requirements were met in the instant case regarding the January 9, 2003 audiogram.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

A.M.A., *Guides* for evaluating hearing loss for schedule award purposes, finding that it provides consistent evaluation procedures.¹²

If at some later date a medical examination indicates that appellant's condition has worsened, a claim for an amended schedule award can be made to cover any additional impairment.¹³

The decision of the Office of Workers' Compensation Programs dated July 24, 2003 is hereby affirmed.

Dated, Washington, DC
October 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² *Donald E. Stockstad*, 53 ECAB __ (Docket No. 01-1570, issued January 23, 2002); *Stuart M. Cole*, 46 ECAB 1011 (1995); *Danniel C. Goings*, 37 ECAB 781 (1986).

¹³ *Andrew Aaron*, 48 ECAB 141 (1996).