

**United States Department of Labor
Employees' Compensation Appeals Board**

EDGAR M. KORNEGAY, Appellant)	
)	
and)	Docket No. 04-1875
)	Issued: December 13, 2004
DEPARTMENT OF THE NAVY,)	
CAMP LEJEUNE MARINE CORPS BASE,)	
Camp LeJeune, NC, Employer)	

Appearances:
Edgar M. Kornegay, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 19, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated July 6, 2004, which found that the medical evidence failed to establish that he had a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this hearing loss claim.

ISSUE

The issue is whether appellant is entitled to a schedule award for his binaural (both ears) employment-related hearing loss.

FACTUAL HISTORY

On November 13, 2003 appellant, then a 53-year-old brick mason, filed an occupational disease claim alleging that he sustained hearing loss in both ears due to factors of his federal employment. Appellant indicated that he first realized his hearing loss was caused by his

employment on March 1, 1997. His last date of exposure to the implicated employment factors was November 13, 2003.

The Office¹ referred appellant to Dr. Charles B. Beasley, a Board-certified otolaryngologist, to determine his hearing loss and rate of impairment, if applicable. In an undated report, Dr. Beasley stated that appellant had a binaural sensorineural hearing loss causally related to his federal employment. He recommended that appellant protect his ears from noise and have an annual audiogram. An audiogram was taken on March 5, 2004. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 5, 20 and 10 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 20, 35 and 25 respectively.

On June 9, 2004 the Office accepted appellant's conditions of binaural hearing loss as being causally related to his federal employment.

On June 14, 2004 the Office medical adviser reviewed the case record. He further applied the Office's standardized procedures to the March 5, 2004 audiogram taken on behalf of Dr. Beasley and determined that appellant had no ratable hearing loss.

On June 23, 2004 appellant filed a Form CA-7, claim for compensation for a schedule award.

By decision dated July 6, 2004, the Office noted that it had accepted appellant's claim for binaural hearing loss, but found that it was not severe enough to be ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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. The Act, however, 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

¹ The referral letter was undated, but record notes a received date as January 26, 2004.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ 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.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

In this case, the Office medical adviser applied the Office’s standardized procedures to the March 5, 2004 audiogram of Dr. Beasley, to whom the Office had referred appellant for a complete otologic and audiologic examination. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 5, 20 and 10, respectively. These decibels were totaled at 45 and divided by 4 to obtain the average hearing loss of 11.25 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 cycles per second revealed losses of 10, 20, 35 and 25 decibels, respectively. These decibels were totaled at 90 and divided by 4 to obtain the average hearing loss of 22.5 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 left ear. The Office medical adviser then multiplied the zero percent loss in the left ear (the ear with the lesser loss) by five, added it to the zero percent loss in the right ear (the ear with the greater loss) and divided the sum by six which equaled zero. Accordingly, the Office medical adviser properly calculated appellant’s hearing loss under the Office standardized procedures to be a zero percent binaural hearing loss.

The Board finds that, although appellant’s claim for hearing loss was accepted as employment related, his hearing loss was not sufficient to be ratable¹¹ under the Act.¹² As

⁵ 20 C.F.R. § 10.404.

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Jerome L. Simpson*, 54 ECAB ____ (Docket No. 02-1465, issued October 4, 2002); *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).

¹¹ See *Royce L. Chute*, 36 ECAB 202 (1984).

¹² 5 U.S.C. §§ 8101-8193.

discussed above, the percentage of hearing loss in either ear was zero percent. Consequently, appellant is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant failed to establish that he is entitled to a schedule award for his employment-related binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 6, 2004 is affirmed.

Issued: December 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member