

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

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LARRY S. ROBINSON, Appellant )  
 )  
and )  
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TENNESSEE VALLEY AUTHORITY, )  
CUMBERLAND FOSSIL PLANT, )  
Cumberland City, TN, Employer )

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**Docket No. 04-1885  
Issued: December 3, 2004**

*Appearances:*  
Larry S. Robinson, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On July 23, 2004 appellant filed a timely appeal from the merit decision of an Office of Workers' Compensation Programs' hearing representative dated May 12, 2004, which affirmed a November 18, 2003 decision finding that he did not sustain a ratable hearing loss entitling him to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has established that he sustained a ratable hearing loss entitling him to a schedule award.

**FACTUAL HISTORY**

On March 11, 2003 appellant, then a 48-year-old laborer, filed an occupational disease claim alleging that on May 20, 2002 he realized that his hearing loss was caused by his federal employment. He stated that the level of noise exposure at work was the only time he was exposed to high volume noise. Appellant indicated that he was exposed to normal household

noise such as the television, telephone and radio. In support of his claim, appellant submitted employment records including, audiograms and audiogram test results and a narrative statement providing his employment history and noise exposure at the employing establishment.

The employing establishment controverted appellant's claim on the grounds that he failed to establish that he sustained a ratable hearing loss causally related to factors of his federal employment.

On October 15, 2003 the Office referred appellant, together with his medical records, a statement of accepted facts and a list of specific questions, to Dr. James O. Fordice, a Board-certified otolaryngologist, for a second opinion medical examination.

On November 6, 2003 Dr. Fordice submitted a medical report noting that, in 1979, appellant's hearing in the right and left ear was normal through 4,000 cycles per second (cps) and that he had decibels losses of 50 in each ear at 6,000 cps. He stated that appellant's hearing loss in the right ear was unchanged at 500 cps, it was worse at all other frequencies bilaterally and it was still within normal limits at 500 cps bilaterally compared to earlier findings. Dr. Fordice diagnosed bilateral sensorineural hearing loss due to noise exposure in appellant's federal civilian employment. He recommended hearing aids and hearing protection in a noisy environment. A November 3, 2003 audiogram performed by Diana Blakeney, an audiologist, accompanied Dr. Fordice's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 15, 20 and 40, respectively and in the left ear decibel losses of 20, 20, 20 and 40, respectively.

By letter dated November 13, 2003, the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On November 14, 2003 an Office medical adviser reviewed Dr. Fordice's November 6, 2003 report and audiogram results to find that appellant reached maximum medical improvement on November 13, 2003 and had a zero percent binaural sensorineural hearing loss for schedule award purposes.

By decision dated November 18, 2003, the Office found that appellant did not sustain a ratable hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). The Office determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.

On November 25, 2003 appellant filed a schedule award claim for his bilateral hearing loss condition. On March 6, 2004 the Office authorized appellant's request for binaural hearing aids.

On March 17, 2004 the Office received a letter from Randy Mabry, an audiologist and associate of Dr. Fordice, who noted Dr. Fordice's report finding that appellant's hearing loss condition was work related. He stated that the Office's denial of appellant's claim was made without due consideration of pure tone thresholds at 4,000 cps. Mr. Mabry further stated that the 4,000 cps level was essential to one's ability to understand speech. He concluded that appellant's ability to understand speech would be significantly impaired without the use of hearing aids.

On December 15, 2003 appellant requested a review of the record regarding the Office's November 18, 2003 decision by an Office hearing representative. In a March 29, 2004 letter, the Office advised the employing establishment that appellant had requested a review of the written record. In response, the employing establishment concurred with the Office's November 18, 2003 decision and requested that this decision remain unchanged based on the medical evidence of record.

By decision dated May 12, 2004, the hearing representative found the evidence of record insufficient to establish appellant's entitlement to a schedule award for his bilateral hearing loss and affirmed the November 18, 2003 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</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>6</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>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404; *Donald E. Stockstad*, 53 ECAB \_\_ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

<sup>5</sup> A.M.A., *Guides* 250.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

six to arrive at the amount of the binaural hearing loss.<sup>9</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>10</sup>

### ANALYSIS

Dr. Fordice, the second opinion specialist, examined appellant and submitted a report on November 6, 2003 finding that he sustained bilateral sensorineural hearing loss related to exposure to noise in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the November 3, 2003 audiogram obtained by Dr. Fordice. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 15, 20 and 40, respectively for a total of 95 decibels. When divided by 4, the result is an average hearing loss of 23.75 decibels. The average loss of 23.75 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 20, 20, 20 and 40, respectively, for a total of 100 decibels. When divided by 4, the result is an average hearing loss of 25 decibels. The average loss of 25 decibels is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Fordice's November 6, 2003 report and accompanying audiogram. This resulted in a calculation of zero percent binaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable for schedule award purposes.

The audiograms performed by the employing establishment are not probative on the issue of appellant's entitlement to a schedule award as they are not accompanied by an otological evaluation<sup>11</sup> and did not otherwise conform to the Office's standards. Therefore, they are insufficient to meet appellant's burden of proof.<sup>12</sup>

### CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

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<sup>9</sup> *Id.*

<sup>10</sup> See Donald E. Stockstad, *supra* note 4.

<sup>11</sup> See George L. Cooper, 40 ECAB 296 (1988).

<sup>12</sup> Regarding Mr. Mabry's statement that the Office's denial of appellant's schedule award claim did not consider decibel losses at 4,000 cps, the Board notes that testing at 4,000 cps is not used as a basis for making a schedule award determination under the A.M.A., *Guides*. *Supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2004 and November 18, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member