

report dated October 11, 2002, Dr. Gordon stated that, based on a review of the records, a statement of accepted facts and of test results of a September 30, 2002 audiogram performed by Lisa Christensen, an audiologist, appellant had an eight percent binaural hearing impairment causally related to his employment. Dr. Gordon recommended hearing aids. In a report dated November 5, 2002, an Office medical adviser advised that appellant had an eight percent binaural hearing loss which was caused by noise exposure in his federal employment. Appellant's date of maximum medical improvement was September 30, 2002. On November 5, 2002 the Office accepted appellant's binaural hearing loss and authorized hearing aids. On November 15, 2002 appellant filed a claim for a schedule award and the Office, in a decision dated December 3, 2002, awarded appellant an eight percent schedule award for binaural hearing loss.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulation² 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 loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice requires the use of a single set of tables so that there may be uniform standards applicable to all claimants.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the frequencies of 500, 1,000, 2,000 and 3,000 decibels.³ The losses at each frequency are added and averaged.⁴ A "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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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 loss.⁷ The

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Board has concurred in the Office's adoption of this standard for evaluating hearing losses for schedule award purposes.⁸

ANALYSIS

In reviewing appellant's September 30, 2002 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 decibels for the right ear reveal decibel losses of 30, 35, 25 and 25, respectively, for a total of 115 decibels. When divided by 4, the result is an average hearing loss of 28.75 decibels. The average loss of 28.75 is reduced by 25 decibels to equal 3.75, which when multiplied by the established factor of 1.5, results in a 5.625 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 decibels revealed decibel losses of 35, 40, 35 and 35 decibels respectively, for a total of 145 decibels. Utilizing the same above-noted formula resulted in a 16.875 percent monaural hearing loss for the left ear. The Office medical adviser next multiplied 5.625 percent, the monaural loss for the right ear, by five and added that figure to 16.875 percent, the monaural loss for the left ear. The sum, 45, was then correctly divided by 6 to arrive at a 7.5 percent binaural loss. This figure was properly rounded-up to eight percent.⁹ Consequently, the reliable evidence of record does not establish that appellant has greater than an eight percent binaural hearing loss.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.¹⁰ With respect to schedule awards for hearing impairments, the pertinent provision of the Act establishes a maximum of 200 weeks of compensation as the award for a complete loss of hearing in both ears.¹¹ A partial loss of hearing is compensated at a proportionate rate.¹² Thus, appellant's award of compensation for an 8 percent binaural hearing loss entitled appellant to 8 percent of 200 weeks of compensation, or 16 weeks of compensation. The record indicates that appellant has already received this amount of compensation. He is entitled to no more compensation under the Act.

CONCLUSION

As appellant has not established that he is entitled to greater than an eight percent schedule award for binaural hearing loss, the Office's decision is affirmed. It is further noted

⁸ *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).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

¹⁰ 5 U.S.C. § 8107.

¹¹ *Id.* at § 8107(c)(13)(B).

¹² *Id.* at § 8107(c)(19).

that the Office properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.¹³

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2002 decision of the Office of Workers' Compensation Programs is affirmed.¹⁴

Issued: February 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹³ On appeal, appellant alleged that the Office erred in determining the period of the award for his hearing loss, which ran from September 30, 2002 to January 19, 2003. The Office properly began the award on the date of maximum medical improvement as determined by the Office medical adviser, who relied on the date of the September 30, 2002 audiogram. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. *James E. Earle*, 51 ECAB 567 (2000); *Yolandra Librera*, 37 ECAB 388 (1986).

¹⁴ On appeal, appellant has also sought the Board's review of his claim for a schedule award for a hip injury in a different claim, A12-193321. However, the Board's review of that claim file does not indicate that the Office has issued a decision in that claim in the year prior to the filing of this appeal, December 26, 2002. Consequently, the Board does not have jurisdiction over this matter in the present appeal. 20 C.F.R. §§ 501.2(c), 501.3(d). This decision does not preclude appellant from further pursuing that claim before the Office. The Board further notes that the case record contains evidence which was submitted subsequent to the Office's December 3, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).