

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

LARRY E. MATHIS, Appellant

and

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Mobile, AL, Employer**

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**Docket No. 04-869
Issued: July 21, 2004**

Appearances:
Larry E. Mathis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 17, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 13, 2003 which granted a schedule award for a two percent monaural hearing loss in his left ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a two percent monaural hearing loss in his left ear for which he received a schedule award.

FACTUAL HISTORY

On July 29, 2003 appellant, then a 56-year-old retired maintenance and operation supervisor, filed an occupational disease claim alleging that he sustained a hearing loss as a result of his federal employment.

On August 26, 2003 the Office referred appellant to Dr. Stephen Toner, a Board-certified otolaryngologist, for a second opinion. Dr. Toner examined appellant on September 30, 2003,

and determined that an audiogram taken that day indicated that appellant had a high frequency sensorineural hearing loss due to noise exposure in his federal employment. The Office referred Dr. Toner's opinion to an Office medical adviser, who applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, to determine that appellant had a two percent monaural hearing loss in his left ear.

By decision dated October 22, 2003, the Office accepted appellant's claim for a monaural sensorineural hearing loss. On October 23, 2003 the Office forwarded a Form CA-7 to appellant for completion. Appellant completed this claim for a schedule award on October 28, 2003.

By decision dated November 13, 2003, the Office issued a schedule award for a two percent hearing loss in the left ear. The award ran from September 30 to October 7, 2003. The Office noted that appellant was to be paid based on $\frac{3}{4}$ of a weekly pay rate of \$1,004.97, or \$753.73, for a total payment of \$783.88.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing 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 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.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz or cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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).

ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the September 30, 2003 audiogram performed for Dr. Toner. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 15, 20, 15 and 15. These decibel levels totaled 65 and when divided by 4, resulted in an average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal less than 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for 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 10, 20, 15 and 60. These decibel levels totaled 105 and when divided by 4, resulted in an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.88 percent loss of hearing for the left ear, rounded up to 2 percent. Pursuant to the Office's standardized procedures, the medical adviser properly determined that appellant had a 2 percent monaural hearing loss in his left ear.

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.⁹ With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that, for a total, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks of compensation.¹⁰ In the instant case, appellant does not have a total, or 100 percent monaural hearing loss, but rather a 2 percent monaural hearing loss. As appellant has a 2 percent loss of use of his left ear, he is entitled to 2 percent of 52 weeks of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled.¹¹

CONCLUSION

The Office medical adviser properly applied the A.M.A., *Guides* when he determined that appellant was entitled to a schedule award for a 2 percent monaural hearing loss in his left ear.

⁹ 5 U.S.C. § 8107.

¹⁰ 5 U.S.C. § 8107(c)(13)(A).

¹¹ On appeal, appellant alleged that the Office erred in determining the period of the award for his hearing loss, which ran from September 30 to October 7, 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, 2003 audiogram. The period covered by schedule awards 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).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 13 and October 22, 2003 are affirmed.

Issued: July 21, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member