

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

---

**DOMINGO L. LUERA, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
KIRTLAND AIR FORCE BASE, NM,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 04-672  
Issued: May 24, 2004**

*Appearances:*  
*Domingo L. Luera, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On January 13, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated November 21, 2003. Pursuant to 20 C.F.R. §§ 10.501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

**ISSUE**

The issue is whether appellant sustained a ratable hearing loss causally related to his federal employment.

**FACTUAL HISTORY**

On December 21, 2000 appellant, then a 53-year-old former<sup>1</sup> automotive mechanic leader, filed an occupational disease claim alleging that he sustained a bilateral hearing loss due

---

<sup>1</sup> Appellant retired on October 6, 2000.

to hazardous noise exposure at work. Appellant indicated that he first realized his condition was work related on November 8, 2000.

On June 12, 2002 the Office referred appellant, together with a statement of accepted facts, to Dr. Gregory M. Schakel, a Board-certified otolaryngologist, for an audiologic and otologic evaluation and an opinion as to whether appellant sustained any hearing loss causally related to his federal employment.

In a report dated July 11, 2002, Dr. Schakel diagnosed noise-induced sensorineural hearing loss and provided the results of audiometric testing performed on that date. 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 30 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 15, 0, 5 and 10 respectively. Dr. Schakel performed calculations based on these findings and determined that appellant had a zero percent bilateral hearing loss.

In a report dated August 24, 2002, the Office's district medical adviser applied the Office's standardized procedures for determining hearing loss and verified the hearing loss determination of Dr. Schakel.

By decision dated August 30, 2002, the Office accepted appellant's claim for a bilateral noise-induced sensorineural hearing loss.

On November 6, 2003 appellant filed a claim for a schedule award.

By decision dated November 21, 2003, the Office denied appellant's claim for a schedule award on the grounds that appellant's hearing loss was not severe enough to be ratably compensable under the Federal Employees' Compensation Act for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.*

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 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 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

In a report dated July 11, 2002, Dr. Schakel provided the results of audiometric testing performed on that date. 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 30 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 15, 0, 5 and 10 respectively. He totaled the decibel losses in the right ear at 65 decibels and divided by 4 to obtain the average hearing loss 16.25 decibels. This average was then reduced by 25 decibels to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. Dr. Schakel totaled the decibel losses of in the left ear at 30 decibels and divided by 4 to obtain the average hearing loss of 7.5 decibels. This average was then reduced by 25 decibels to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. The Office district medical adviser reviewed the results of the audiometric testing performed on July 11, 2002 for Dr. Schakel and correctly applied the Office’s standardized procedures to find that appellant had no ratable hearing loss.<sup>11</sup>

---

<sup>5</sup> A.M.A., *Guides*, 250 (5<sup>th</sup> ed. 2001).

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

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

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

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

<sup>10</sup> *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).

<sup>11</sup> The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

**CONCLUSION**

Appellant has failed to establish that he has a ratable hearing loss and is, therefore, not entitled to a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 21, 2003 is affirmed.

Issued: May 24, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member