

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

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**DAVID G. BIGLER, Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
LETTERKENNY ARMY DEPOT,  
Chambersburg, PA, Employer**

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**Docket No. 04-1630  
Issued: November 19, 2004**

*Appearances:*  
*David G. Bigler, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On June 14, 2004 appellant filed a timely appeal from the April 19, 2004 merit decision of the Office of Workers' Compensation Programs, which denied a schedule award for his employment-related hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review whether appellant is entitled to a schedule award.

**ISSUE**

The issue is whether appellant's employment-related hearing loss is ratable, entitling him to a schedule award for permanent impairment.

**FACTUAL HISTORY**

On March 4, 2003 appellant, then a 54-year-old mobile equipment metal mechanic leader, filed a claim alleging that he sustained a hearing loss as a result of his occupational exposure to noise. The employing establishment submitted all hearing tests performed since 1982. The Office referred appellant, together with a statement of accepted facts, to Dr. Clifford N. Steinig, an otorhinolaryngologist, for an evaluation.

On June 10, 2003 Dr. Steinig examined appellant and reported with some degree of certainty that his hearing loss was due to noise exposure at work. An audiogram obtained that day showed hearing thresholds of 10, 5, 5 and 20 decibels (dBA) on the right and 25, 15, 25 and 30 dBA on the left at frequencies, respectively, of 500, 1,000, 2,000 and 3,000 cycles per second (cps). Dr. Steinig described the thresholds as accurate and noted that speech reception was perfectly normal in the right ear and borderline normal in the left. Speech discrimination was excellent bilaterally. He reported that appellant did not need hearing aids at the present time.

On August 28, 2003 the Office accepted appellant's claim for the condition of binaural noised-induced hearing loss. In a decision dated April 19, 2004, however, the Office denied a schedule award for permanent impairment. The Office found that appellant did not sustain a compensable level of hearing loss due to hazardous noise exposure at work.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.<sup>1</sup> Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup>

Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged. Then, a "fence" of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday sounds under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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>3</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>4</sup>

### **ANALYSIS**

Using the June 10, 2003 audiogram obtained for Dr. Steinig, hearing thresholds at 500, 1,000, 2,000 and 3,000 cps total 40 dBA on the right and 95 on the left, for averages of 10 and 23.75 respectively. Because both of these averages are below the "fence" of 25 dBA, no impairment of hearing is considered to exist as a practical matter, according to the A.M.A.,

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>3</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>4</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).

*Guides.*<sup>5</sup> Appellant's hearing loss is without question real, but it is not considered severe enough to be ratable for schedule award purposes. Applying standardized procedures, the Office properly denied a schedule award on the grounds that appellant's employment-related hearing loss did not warrant an award for permanent impairment. The Board will affirm that denial.

On appeal, appellant argues that his hearing loss is a hazard. If there is any background noise, he explains, he cannot hear what people are saying. If there is an emergency and someone hollers at him to get out of the way, he cannot hear that person. The Board notes that compensation for permanent impairment and compensation for wage loss are different matters. If appellant's employment-related hearing loss disables him from performing the duties of his position, he may claim compensation for wage loss using a CA-7 form.

### **CONCLUSION**

The Board finds that the Office properly denied a schedule award. Appellant's employment-related hearing loss is not severe enough to warrant a schedule award for permanent impairment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> Averages are also below the "fence" of 25 dBA on appellant's January 29, 2003, January 30, 2002 and January 18, 2001 serial audiograms.