

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

MICHAEL ROSADO, Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Huachuca, AZ, Employer**

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**Docket No. 04-1777
Issued: October 22, 2004**

Appearances:
Michael Rosado, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 7, 2004 appellant filed a timely appeal of a May 14, 2004 merit decision of the Office of Workers' Compensation Programs issuing him a schedule award for a nine percent monaural (left ear) loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has greater than a nine percent monaural (left ear) loss of hearing. On appeal appellant questioned why all his years of federal employment that aggravated his condition converted to 4.68 weeks of compensation.

FACTUAL HISTORY

On February 10, 2003 appellant, 63 years of age, filed a claim for compensation for an occupational disease, a loss of hearing, that he attributed to his noise exposure both in the military service and in his employment at the employing establishment as a warehouseman, tools

and parts attendant, air conditioning equipment mechanic, electronic mechanic supervisor and instructor beginning in 1974 and ending with his retirement on January 31, 2003.

Appellant submitted copies of tracings and results of audiograms done annually from May 10, 1973 to September 28, 1983 and from October 5, 1989 to January 29, 2001. He also submitted an audiologist's report dated February 14, 2003 listing an impression of cochlear lesions bilaterally, resulting in sensorineural hearing loss bilaterally. This was accompanied by a January 28, 2003 audiogram. The employing establishment submitted information on his exposure to noise and a noise level survey.

On May 7, 2003 the Office referred appellant, a statement of accepted facts and his audiograms to Dr. Eugene P. Falk, a Board-certified otolaryngologist, for an evaluation of his hearing loss and its relationship to his employment. A May 23, 2003 report was accompanied by an audiogram of the same date that Dr. Falk interpreted to show bilateral symmetrical mid and high tone losses consistent with noise trauma with fairly good discrimination and normal tympanometry. Dr. Falk diagnosed permanent noise-induced hearing loss related to appellant's previous employment, and recommended bilateral hearing aids.

On June 19, 2003 the Office advised appellant it had accepted his claim for a noise-induced hearing loss and authorized the purchase of hearing aids.

On July 14, 2003 an Office medical adviser, Dr. David N. Schindler, a Board-certified otolaryngologist, reviewed Dr. Falk's report and recommended that Dr. Falk perform a repeat audiogram to determine why there was a low frequency hearing loss at 250 cycles per second (cps) and 500 cps that was not seen on the January 28, 2003 audiogram. On September 5, 2003 the Office referred appellant back to Dr. Falk for this purpose. In a September 22, 2003 report, Dr. Falk noted that a September 22, 2003 audiogram did not show the minimal decrease in the lower frequencies, and stated, under impression, "Perhaps his responses are more attentive today."

On April 26, 2004 appellant filed a claim for a schedule award. On April 27, 2004 Dr. Schindler applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to Dr. Falk's September 22, 2003 audiogram and arrived at a nine percent monaural (left ear) loss of hearing.

On May 14, 2004 the Office issued a schedule award for a nine percent monaural (left ear) hearing loss, finding that this entitled appellant to 4.68 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members

of the body.¹ For total loss of hearing in one ear, the Act provides for 52 weeks of compensation.² Any loss less than a total loss is compensated at a proportionate rate.³

The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.⁴ 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 a uniform standard applicable to all claimants.⁵ The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides* using the frequencies of 500, 1,000, 2,000 and 3,000 cps.⁶ The losses at each frequency are added up and averaged and 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.⁷ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

An Office medical adviser applied the Office’s standardized procedures to the September 22, 2003 audiogram from Dr. Falk. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 15, 25 and 45 respectively. These decibels were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 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 cps revealed decibel losses of 15, 20, 30 and 60 respectively. These decibels were totaled at 125 decibels and were divided by 4 to obtain

¹ 5 U.S.C. § 8107.

² 5 U.S.C. § 8107(c)(13).

³ 5 U.S.C. § 8107(c)(19).

⁴ *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ A.M.A. *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *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).

the average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 6.25 which was multiplied by the established factor of 1.5 to compute a 9.4 percent loss of hearing for the left ear.

The Board finds that the Office medical adviser correctly applied the Office's standards to Dr. Falk's September 22, 2003 audiogram in determining that appellant had a nine percent monaural (left ear) loss of hearing.¹¹ The only reports that conformed to the Office's standards for evaluating hearing loss were Dr. Falk's, as his were the only audiograms accompanied by a medical report from an audiologist.¹² The Office properly applied the standards of the A.M.A., *Guides* to Dr. Falk's September 22, 2003 audiogram rather than his May 23, 2003 audiogram, as the later audiogram was more consistent with the January 28, 2003 audiogram submitted by appellant and Dr. Falk indicated that appellant may have been more attentive on the later audiogram.

The Office paid appellant the appropriate number of weeks of compensation for his nine percent monaural hearing loss. Since 52 weeks of compensation are paid for a total, or 100 percent loss, and compensation for a partial loss is paid at a proportionate rate, the Office properly calculated the number of weeks of compensation due appellant for his 9 percent monaural loss of hearing by multiplying 9 percent by 52 weeks.

CONCLUSION

Appellant has no greater than a nine percent monaural (left ear) loss of hearing, for which he received the appropriate number of weeks of compensation.

¹¹ The Board has approved the Office's practice of rounding out percentages of permanent impairment to the nearest whole percent. See *Jeffrey J. Stickney* 51 ECAB 616 (2000); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (June 2003).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600 (September 1994) describes the requirements for medical reports for hearing loss. Included in these requirements are audiological testing by an audiologist, and a medical examination by an otolaryngologist.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member