

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

ROBERT J. GOODSON, Appellant)	
)	
and)	Docket No. 04-1130
)	Issued: September 17, 2004
DEPARTMENT OF THE NAVY, NAVAL AIR)	
SYSTEMS COMMAND, San Diego, CA,)	
Employer)	

Appearances: *Case Submitted on the Record*
 Ross Kirk, Esq., for the appellant
 Office of Solicitor, for the Director

DECISION AND ORDER

Before:
 DAVID S. GERSON, Alternate Member
 WILLIE T.C. THOMAS, Alternate Member
 A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 23, 2004 appellant filed a timely appeal of the March 2, 2004 merit schedule award decision of the Office of Workers' Compensation Programs, finding that he had no more than a 26 percent binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than a 26 percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On August 5, 2003 appellant, then a 51-year-old sheet metal worker and production controller, filed an occupational disease claim for hearing loss caused by noise exposure in the course of his federal employment. He noted that he was exposed to chronic repetitive daily noise

including dry grinding and cutting while using hand-held power tools and high speed grinders, cutting wheels and electric power tools on a daily basis. Appellant did not stop work.

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

By letter dated November 7, 2003, the Office referred appellant for a second opinion examination comprised of audiometric testing and otologic evaluation with Dr. Theodore Mazer, a Board-certified otolaryngologist.

The audiologic evaluation was performed on December 18, 2003 by a certified audiologist, Tammy Prida, who found that appellant sustained hearing loss to the right ear at 1,000, 2,000 and 3,000 cycles per second (cps) at frequencies of 50, 50 and 50 decibels, respectively and to the left ear at 1,000, 2,000 and 3,000 cps frequencies of 45, 40 and 40 decibels, respectively.

Following an examination of appellant and a review of the audiologic results, Dr. Mazer opined, in a June 6, 2004 report, that appellant's otologic evaluation revealed relatively flat, symmetric binaural sensorineural hearing loss, with speech reception thresholds of 45 decibels right and 40 decibels left, consistent with pure tone responses and good word discrimination in each ear and a normal tympanogram. He also indicated that the audiologist advised amplification with continued ear protection in noise and annual monitoring. The physician noted appellant's history of occupational noise exposure and noise-induced loss along with signs of early presbycusis. Dr. Mazer opined that appellant had a ratable hearing impairment and at least one percent was due to his industrial noise exposure. He advised that appellant had an impairment rating of 33.75 percent in the right and 26.25 percent in the left for a 27.5 percent binaural impairment. The physician indicated amplification was advised, bilaterally and indicated replacement devices would be warranted every four to seven years. Regarding appellant's tinnitus, he described it as intermittent and minimal and indicated it was not significant enough to warrant an additional impairment.

Based upon Dr. Mazer's report and the audiologic evaluation, the Office medical adviser found, after applying the Office's standardized procedures, that appellant suffered monaural hearing loss to the right ear of 33.8 percent and monaural hearing loss to the left ear of 24.4 percent, for a combined binaural loss of 26 percent due to hazardous noise to which he was exposed during his federal employment. He indicated the diagnosis was established with regard to noise-induced hearing loss in the course of his federal employment and that hearing aids were authorized.¹

On February 27, 2004 the Office accepted appellant's claim for binaural sensorineural hearing loss.

¹ Dr. Mazer also noted that the audiometer was calibrated on February 17, 2003 and accepted those thresholds as reliable.

By an award of compensation dated March 2, 2004, the Office granted appellant a schedule award for 26 percent binaural hearing loss for 52.00 weeks of compensation for the period December 18, 2003 to March 20, 2004.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 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*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁴ 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.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 hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Office medical adviser reviewed the results of audiometric testing performed on December 18, 2003 and correctly applied the Office's standardized procedures. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses of 40, 50,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). On January 29, 2001 the Office announced that, effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* 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).

50 and 50 decibels, respectively. These decibel losses were totaled at 190 decibels and divided by 4, to obtain the average hearing loss of 47.55 decibels. This average was then reduced by 25 decibels to obtain the average hearing loss of 22.5, which when multiplied by the established factor of 1.5 resulted in a 33.8 percent monaural loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 40, 45, 40 and 40, respectively. These decibel losses were totaled at 165 decibels and were divided by 4, to obtain the average hearing loss of 41.25 decibels. This average of 41.25 decibels, was then reduced by 25 decibels to equal 16.25, which when multiplied by the established factor of 1.5 resulted in a 24.4 percent hearing loss in the left ear. The 24.3 percent for the left ear, when multiplied by 5, yielded a product of 122. The 122 was then added to the 33.8 percent hearing loss for the right ear to obtain a total of 155.8. The 155.8 was divided by 6, in order to calculate a binaural loss of hearing of 26 percent. Consequently, the evidence of record does not establish that appellant has greater than a 26 percent binaural loss of hearing.

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.⁹ Since the binaural hearing loss in this case is 26 percent, appellant would be entitled to 26 percent of 200 weeks or 52 weeks of compensation.

On appeal, appellant alleges that he only received a partial payment for the 52 weeks listed in the award and argues that he was entitled to the remainder of his award which was approximately 39 weeks. The Board finds that the Office erred in its calculation of the period of the award. In the March 2, 2004 decision, the Office correctly determined that appellant was entitled to 52 weeks for his binaural hearing loss but then found that the period of the award would only run for 52 weeks, from December 18, 2003 to March 20, 2004. This time frame only comprises approximately 13 weeks and does not equate to 52 weeks. The Board finds that the Office, therefore, improperly determined the period of the award.

CONCLUSION

The Board finds that appellant is entitled to no greater than a 26 percent binaural hearing loss. However, the Board will remand the case for the Office to calculate the proper period of the award, to include 52 weeks of compensation.

⁹ 5 U.S.C. § 8107(c)(13)(B).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed in part and remanded in part.

Issued: September 17, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member