

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

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**ALBERT J. HARDEN, Appellant**

**and**

**DEPARTMENT OF THE NAVY, YERMO  
ANNEX, Barstow, CA, Employer**

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**Docket No. 04-1372  
Issued: September 30, 2004**

*Appearances:*  
*Albert J. Harden, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On April 28, 2004 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated March 25, 2004 which granted him a schedule award for a 24 percent impairment of hearing to his right ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the schedule award issue in this case.

**ISSUE**

The issue is whether appellant has more than a 24 percent right ear hearing loss for which he received a schedule award on March 25, 2004.

**FACTUAL HISTORY**

On March 5, 2003 appellant, then a 54-year-old materials handler leader, filed a claim for occupational disease alleging that he developed bilateral hearing loss due to his employment exposure to hazardous noise. He did not stop work, but was removed from hazardous noise duties. Appellant provided a list of the tools and machinery to which he had been exposed and the concomitant noise levels.

In support of his hearing loss claim, appellant submitted multiple audiograms from the employing establishment's hearing conservation program. Significant threshold shifting was noted as occurring and the testing audiologist concluded that appellant had a mild/moderate high frequency sensorineural hearing loss on the right, and a severe/profound mixed hearing loss on the left with a significant threshold shift that was not consistent with noise exposure.

By letter dated May 2, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim, and requested that he submit a detailed employment history and a rationalized medical report discussing causal relationship.

On August 11, 2003 the Office prepared a statement of accepted facts regarding appellant's employment history and medical follow-up. On August 12, 2003 it referred appellant, together with the statement of accepted facts and the relevant case record, to Dr. Montra M. Kanok, a Board-certified otolaryngologist, for a rationalized medical opinion as to the nature and extent of any hearing loss.

In a report dated September 4, 2003, Dr. Kanok reviewed the audiologic testing results and measurements, both air and bone conduction, which were obtained that date. She reported findings upon physical examination. Dr. Kanok reviewed appellant's history of high frequency sensorineural bilateral loss of hearing and total loss of hearing in the left ear since 1997. She noted that on the left appellant complained of more tinnitus, accompanied by complaints of dizziness and vertigo, pressure and numbness. Dr. Kanok reviewed the audiometric examination and opined that it was reliable and accurate, and demonstrated noise-induced hearing loss on the right but only vibratory sensation without pure-tone testing responses, speech reception threshold or discrimination in the left ear. She diagnosed bilateral sensorineural hearing loss, with the left ear deaf secondary to Meniere's disease, and the right ear loss secondary to noise exposure at work. Dr. Kanok compared appellant's audiometric test results and concluded that he had sensorineural hearing loss in both ears with the left ear practically deaf. The pattern of hearing loss in the right ear was most likely caused by excessive exposure to loud noises, but that the loss in the left ear was probably caused by Meniere's disease which affected the inner ear, causing excessive indolence and greater hearing loss. Dr. Kanok opined that this suspicion was "confirmed or bolstered by the fact that [the] MS scan was normal, meaning there [was] no retrocochlear tumor causing the hearing loss." Since appellant's hearing loss had been present since he worked for the employing establishment, she believed that his hearing loss in the right ear was most likely caused by noise exposure both as an infantryman in Vietnam and working for the employing establishment. Dr. Kanok opined that the hearing loss in the left ear could be caused by the Meniere's disease and could also be aggravated by noise exposure over the years. She noted that because of continued vertigo, nausea and dizziness, appellant required constant care by an otologist. Dr. Kanok also noted that appellant's left ear was too impaired for amplification to be helpful, but that the right ear would benefit from a hearing aid.

By letter dated September 20, 2003, the Office advised appellant that it had accepted that he sustained a right-sided sensorineural hearing loss. On September 29, 2003 appellant filed a Form CA-7 claim for a schedule award. He indicated that he had not stopped work.

Appellant submitted a Form CA-20 attending physician's report dated October 10, 2003 from Dr. Jessica V. Basa, a family practitioner, who noted appellant's history as "dizziness,

hearing loss, poor balance, tinnitus” and diagnosed “Meniere’s syndrome, noise-induced hearing loss.” She checked “yes” to the question of whether the condition found was caused or aggravated by appellant’s employment, but failed to provide any further explanation.

On November 4, 2003 the Office referred the record to Dr. David N. Schindler, an Office consultant Board-certified in otolaryngology. In a November 26, 2003 report, Dr. Schindler reviewed appellant’s factual and medical history, noted his hazardous noise exposure, and reviewed the audiograms and findings of Dr. Kanok. He opined that the hearing loss found was aggravated by conditions of appellant’s federal employment. The diagnosis noted was bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss due to noise exposure. Dr. Schindler noted that the hearing loss in the right ear was the result of accumulated noise exposure and the hearing loss in the left ear was the result of Meniere’s syndrome and was not the result of noise exposure. He clarified that the hearing loss in the left ear would be exactly the same whether appellant was exposed to noise or not. Dr. Schindler used the audiogram test results of September 4, 2003 to find that appellant had a 24.4 percent monaural loss of hearing in the right ear.<sup>1</sup> The hearing loss in the left ear was 100 percent; but Dr. Schindler noted that a schedule award should not be calculated because the loss was not the result of noise exposure in employment. Dr. Schindler agreed that a hearing aid was indicated for the right ear.

By decision dated March 25, 2004, the Office granted appellant a schedule award for a 24.4 percent impairment of his right ear for the period September 4 to December 1, 2003, or a total of 12.69 weeks of compensation. The Office noted the date of maximum medical improvement as September 4, 2003.

On appeal appellant argues that he should receive a schedule award for his loss of hearing in his left ear as well as the one for loss of hearing on the right.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act and its implementing regulation<sup>2</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 of a member 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>3</sup>

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<sup>1</sup> The Office medical adviser properly applied the Office’s standardized procedures to the audiogram obtained for Dr. Kanok on September 4, 2003. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 20, 30, 50 and 65 decibels, respectively. These losses were totaled at 165 decibels and divided by 4 to arrive at an average hearing loss of 41.25 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 16.25 decibels, which was multiplied by 1.5 to arrive at a 24.4 percent hearing loss for the right ear.

<sup>2</sup> See 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>5</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>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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 5, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

The Office has set forth requirements for the medical evidence to be used in evaluating occupational hearing loss claims. The requirements, as set forth in the Office’s Federal (FECA) Procedure Manual, provide that the employee undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist’s report include the date and hour of examination; date and hour of the employee’s last exposure to loud noise; a rationalized medical opinion regarding the relationship of the hearing loss to employment-related noise exposure; and a statement on the reliability of the tests conducted.<sup>10</sup>

### ANALYSIS

Dr. Schindler, the Office medical consultant, properly applied the standardized procedures to the audiogram obtained for Dr. Kanok on September 4, 2003. Testing for the right ear at frequencies of 500, 1,000, 2,000, and 3,000 cycles per second revealed losses of 20, 30, 50 and 65 decibels, respectively. These losses were totaled at 165 decibels and divided by 4 to arrive at an average hearing loss of 41.25 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 16.25 decibels, which was multiplied by 1.5 to arrive at a 24.4 percent hearing loss for the right ear.

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<sup>4</sup> See A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

<sup>5</sup> *Id.*

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

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

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

<sup>9</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>10</sup> *George L. Cooper*, 40 ECAB 296 (1988).

Testing for the left ear at frequencies of 500, 1,000, 2,000, and 3,000 cycles per second revealed total loss of hearing, except for vibratory sensation on bone conduction testing. This total loss of hearing was divided by 4 and reduced by 25 decibels to equal a 100 percent hearing loss for the left ear.

Dr. Schindler noted, however, that he did not calculate a binaural hearing loss because the loss of hearing in appellant's left ear was not due to factors of his federal employment but was due to Meniere's disease. There is no rationalized medical evidence which attributed his hearing loss on the left to employment-related noise exposure. Dr. Kanok diagnosed bilateral sensorineural hearing loss with the left ear practically deaf secondary to Meniere's disease, and the right ear loss secondary to noise exposure at work. She noted that the pattern of hearing loss in the right ear was most likely caused by excessive exposure to loud noises, but that the loss in the left ear was most likely due to Meniere's disease of the left ear. This opinion does not establish that appellant has a left ear hearing loss due to occupational noise exposure. Dr. Schindler also found that appellant's hearing loss in the left ear was 100 percent, but was not the result of his federal employment. The Board finds that the left ear hearing loss is not established as being due to appellant's employment, and he is not entitled to compensation in the form of a schedule award under the Act for this condition.

The Office followed its standardized procedures and correctly calculated appellant's monaural hearing loss of 24.4 percent in the right ear. Although appellant has sustained a permanent and total hearing loss in his left ear, it is not established as being due to factors of his federal employment and is not compensable under the Act.

### **CONCLUSION**

The audiometric testing results submitted by appellant and solicited by the Office do not demonstrate that his left ear deafness is causally related to hazardous noise exposure in his federal employment. Therefore, appellant is not entitled to a schedule award for such hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 25, 2004 is hereby affirmed.

Issued: September 30, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member