

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

DAVID W. FERRALL, Appellant

and

**DEPARTMENT OF THE ARMY, YUMA
PROVING GROUND, Yuma, AZ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-2142
Issued: February 23, 2005**

Appearances:
David W. Ferrall, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 30, 2004 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated May 26, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

The issue is whether appellant has more than a two percent loss of hearing in his left ear for which he received a schedule award.

FACTUAL HISTORY

On January 21, 2003 appellant, then a 58-year-old engineering technician, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his federal employment. He did not stop work.

In a statement accompanying his claim, appellant described his noise exposure during the course of his federal employment. He further stated:

“My quality of life on and off the job has been affected due to the current constant ringing in my ears, which use to gradually disappear. I am not able to hear parts of everyday conversations and vocal entertainment, such as radio, TV or stereo. The stress of the constant ringing in my ears creates a hardship both at home and at work.”

Appellant submitted audiograms performed by the employing establishment on October 11, 2000 and December 30, 2002. He further submitted a January 6, 2003 audiogram and an evaluation from the employing establishment’s clinic, which noted his complaints of ringing in his ears and a loss of hearing. The clinic note contains a diagnosis of tinnitus and recommends an examination.¹

The employing establishment submitted noise level information, which the Office accepted as establishing that appellant was exposed to noise greater than 85 decibels.

On August 15, 2003 the Office referred appellant, together with a statement of accepted facts, to Dr. C. Phillip Daspit, a Board-certified otolaryngologist, for an evaluation to determine whether he had a work-related hearing loss. Dr. Daspit evaluated appellant on November 6, 2003 and obtained an audiogram. In a report dated December 16, 2003, Dr. Daspit reviewed the results of the audiogram and opined that appellant had a “bilateral high-frequency hearing loss with intact word discrimination scores.” He noted that the audiogram revealed speech discrimination scores of 88 percent in the right ear and 92 percent in the left ear. Dr. Daspit diagnosed high frequency sensorineural hearing loss bilaterally due to noise exposure and tinnitus “secondary to the above.” He recommended hearing aids.

On February 15, 2004 an Office medical adviser reviewed Dr. Daspit’s report and audiometric test results and concluded that appellant was entitled to a schedule award for a two percent monaural hearing loss in the left ear. He noted that the diagnosis was bilateral high frequency neurosensory hearing loss consistent with hearing loss due to noise exposure and that appellant was entitled to hearing aids for the left ear.

By decision dated May 26, 2004, the Office granted appellant a schedule award for a two percent loss of hearing of the left ear. The period of the award ran for 1.04 weeks, from November 6 to 13, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act² provides for compensation to employees sustaining permanent loss or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a

¹ The clinic note is unsigned.

² 5 U.S.C. §§ 8101-8193.

member shall be determined. The method used in making such determination is a matter which results in the sound discretion of the Office. For consistent results and to insure equal justice, the Board has authorized 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*), (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ 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.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

Regarding tinnitus, the A.M.A., *Guides* states:

“Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”⁹

ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the November 6, 2003 audiogram performed for Dr. Daspit.¹⁰ Testing for the right ear revealed decibel losses 10, 15, 15 and 55 respectively. These decibel losses were totaled at 95 and divided by 4 to obtain the average hearing loss per cycle of 23.75. The average of 23.75 was

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* at 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ A.M.A., *Guides* at 246.

¹⁰ While the record contains prior audiograms taken by the employing establishment, there is insufficient information accompanying the audiograms to demonstrate that they meet the Office's standards for audiograms used in the evaluation of permanent hearing impairment. See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

then reduced by the 25 decibel fence¹¹ to equal 0 decibels for the right ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear revealed decibel losses 10, 20, 15 and 60 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by 25 decibels to equal 1.25 decibels for the left ear. The 1.25 was multiplied by 1.5 resulting in a 1.875 percent loss for the right ear. The Office medical adviser properly rounded up to find a 2 percent monaural loss for the left ear.¹²

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Daspit's December 16, 2003 report and accompanying November 6, 2003 audiogram performed on his behalf. The result is a two percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear.¹³ The Board further finds that the Office medical adviser properly relied upon the November 6, 2003 audiogram as it was part of Dr. Daspit's evaluation and met all the Office's standards.¹⁴

The schedule award provision of the Act specifies the number of weeks of compensation to be awarded for loss of hearing. For total loss of hearing in one ear, the Act provides for 52 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate, so a 2 percent monaural hearing loss equals 1.04 weeks of compensation or 2 percent of 52 weeks.

On appeal appellant notes that he has a constant ringing in both ears. The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of monaural or binaural hearing impairment may impair speech discrimination and states: "Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living."¹⁵ The A.M.A., *Guides* advises as follows:

"Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the

¹¹ The decibel "fence" is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 decibels or less. See A.M.A., *Guides* at 250.

¹² The Office rounds the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

¹³ To determine the binaural hearing loss the lesser loss, 0, is multiplied by 5 and added to the greater loss, 1.9. The result is divided by 6 for a binaural hearing loss estimate of 0.3 percent or 0 percent when rounded down.

¹⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

¹⁵ A.M.A., *Guides* at 246.

limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment.”¹⁶

Dr. Daspit, in his December 16, 2003 report, diagnosed tinnitus due to noise exposure. He further found, however, that appellant had “intact word discrimination scores.” Although appellant contends that his tinnitus adversely affects his home and work life, it is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. Accordingly, the Board finds that appellant is not entitled to an additional award for tinnitus.

CONCLUSION

The Board finds that appellant has no more than a two percent loss of hearing in the left ear for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated May 26, 2004 is affirmed.

Issued: February 23, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁶ *Id.*