

FACTUAL HISTORY

On July 13, 2001 appellant, then a 59-year-old retired supervisory criminal investigator, filed an occupational disease claim for hearing loss. On November 13, 2002 the Office accepted appellant's claim for sensorineural hearing loss. In a decision dated February 27, 2004, the Office awarded appellant a schedule award for a 1.9 percent monaural hearing loss involving the right ear. The Office based its determination on the November 3, 2002 calculation of its medical adviser, who reviewed the August 8, 2002 audiological evaluation and report submitted by Dr. Melba Lewis, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of .988 weeks, from August 8 to 14, 2002.

Appellant requested reconsideration on April 19, 2004. On July 16, 2004 the Office modified the prior schedule award to reflect appellant's entitlement to a two percent monaural hearing loss of the right ear. The Office explained that the prior award of 1.9 percent should have been rounded up to the next whole number. As a result, appellant received an additional \$38.84. The Office also explained that, while the claim had been accepted for tinnitus, the November 13, 2002 acceptance letter did not properly reflect that information.

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 Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the losses at each frequency are added up and averaged.⁵ 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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural

² 5 U.S.C. § 8107(a), (c). The Act provides that for a total, or 100 percent loss of hearing in 1 ear, an employee shall receive 52 weeks of compensation. 5 U.S.C. § 8107(c)(13)(A).

³ 20 C.F.R. § 10.404 (1999).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

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

⁶ *Id.*

⁷ *Id.*

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.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

Appellant argued that the Office had not accepted his claim for tinnitus and Dr. Lewis apparently did not consider this condition in her August 8, 2002 evaluation. Contrary to appellant's assertion, the Office accepted his claim for tinnitus. The Office stated in the July 16, 2004 decision that tinnitus was an accepted condition, but did not include this information in the November 13, 2002 acceptance letter. With respect to Dr. Lewis' awareness of appellant's tinnitus, her August 8, 2002 report included a diagnosis of bilateral noise-induced hearing loss and tinnitus. She also noted that appellant's tinnitus did not warrant an additional impairment rating.

The Board finds that appellant has no greater than a two percent monaural hearing loss of the right ear. In reviewing appellant's most recent August 8, 2002 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear reveal decibel losses of 15, 20, 25 and 45, respectively, for a total of 105 decibels. This figure when divided by 4 results in an average hearing loss of 26.25 decibels. The average loss of 26.25 is reduced by 25 decibels to equal 1.25, which when multiplied by 1.5 results in a 1.875 percent monaural hearing loss for the right ear. This figure should be rounded up to two percent.¹⁰ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 15, 15 and 50 decibels respectively, for a total of 95 decibels. Utilizing the above-noted formula, results in a zero percent monaural hearing loss for the left ear.

The Office medical adviser applied the proper standards to the findings as stated in Dr. Lewis' report and the accompanying August 8, 2002 audiogram. Accordingly, appellant failed to establish that he has greater than a two percent monaural hearing loss of the right ear.

CONCLUSION

The Office properly granted appellant a schedule award for a two percent monaural hearing loss of the right ear.

⁸ *Id.*

⁹ *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).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member