

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

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**RONALD E. ESPINOZA, Appellant**

**and**

**DEPARTMENT OF THE NAVY, MARINE  
CORPS LOGISTICS BASE, Barstow, CA,  
Employer**

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**Docket No. 05-311  
Issued: June 7, 2005**

*Appearances:*  
*Ronald E. Espinoza, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 17, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 13, 2004 which found that his employment-related hearing loss and tinnitus were not ratable for schedule award purposes. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to a schedule award for his employment-related bilateral hearing loss.

**FACTUAL HISTORY**

On July 11, 2003 appellant, then a retired 59-year-old pneudraulic systems mechanic, filed an occupational disease claim alleging that factors of employment caused bilateral hearing loss and tinnitus.<sup>1</sup> In an attached statement, he described the employment conditions he believed

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<sup>1</sup> Appellant retired on July 3, 2001.

caused his condition, and submitted an audiogram performed on July 1, 2003 by Beth Lillywhite, M.A. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear 10, 10, 10 and 30 decibels; left ear 10, 10, 15 and 35 decibels, respectively.

By letter dated August 19, 2003, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Montra Kanok, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram. Dr. Kanok submitted a report dated September 16, 2003 describing his examination. He diagnosed a bilateral high frequency sensorineural hearing loss with secondary tinnitus and opined that the condition was due to employment-related noise exposure and could be helped with hearing aids. Dr. Kanok also submitted results of audiometric testing performed by a certified audiologist. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps and revealed the following: right ear 10, 10, 20 and 35 decibels; left ear 10, 10, 20 and 30 decibels, respectively. The record also contains employing establishment audiogram test results dating from March 16, 1983 to February 15, 2000.

In a report dated October 23, 2003, an Office medical adviser agreed that appellant's hearing loss was employment related but advised that it was not ratable for schedule award purposes. In reaching this determination, he utilized the results from the July 1, 2003 audiogram and determined that maximum medical improvement had been reached on that date.

On October 29, 2003 the Office accepted that appellant sustained employment-related bilateral hearing loss. On November 5, 2003 he filed a schedule award claim. In a decision dated November 24, 2003, the Office found that appellant had no compensable impairment secondary to his employment-related hearing loss as it was not ratable for schedule award purposes. On December 3, 2003 appellant requested a hearing that was held on July 1, 2004. At the hearing, he testified regarding his hearing loss and tinnitus problems. By decision dated September 13, 2004, an Office hearing representative affirmed the November 24, 2003 decision.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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.<sup>4</sup> The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent*

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8107(c).

<sup>4</sup> *Renee M. Straubinger*, 51 ECAB 667 (2000).

*Impairment* (hereinafter A.M.A., *Guides*). Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added and averaged.<sup>5</sup> The “fence” of 25 decibels is then 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 five, 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>

### ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss because neither the July nor September 2003 audiogram results demonstrated ratable impairment.<sup>10</sup>

The July 1, 2003 audiogram demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 10, 10, 10 and 30 decibels on the right for a total of 60 decibels. This figure, when divided by 4, results in an average hearing loss of 15 decibels. The average of 15 decibels, when reduced by 25 decibels, results in a 0 percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 15 and 35, for a total of 70 decibels. This figure, when divided by 4, results in an average hearing loss of 17.5 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear.

The September 16, 2003 audiogram obtained by Dr. Kanok demonstrated recorded values at 500, 1,000, 2,000 and 3,000 cps on the right of 10, 10, 20 and 35 decibels respectively, for a total of 75 decibels. This figure, when divided by 4, results in an average hearing loss of 18.75 decibels. The average of 18.75 decibels, when reduced by 25 decibels, results in a 0 percent monaural hearing loss of 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 10, 10, 20 and 30, respectively, for a total loss of 70 decibels; 70 decibels divided by 4 results in an average of 17.5 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear. The Board finds that both the July and September 2003 studies demonstrate that appellant’s

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<sup>5</sup> *Id.* at 250.

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

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

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

<sup>9</sup> *Horace L. Fuller*, 53 ECAB 775 (2002).

<sup>10</sup> Appellant also submitted studies performed between 1983 and 2000 but these do not demonstrate a ratable impairment. The Board therefore finds that these studies do not establish that appellant is entitled to a schedule award.

hearing loss is not ratable and he is not entitled to a schedule award for his accepted hearing loss condition.

Appellant also contends that his tinnitus entitles him to a schedule award. The A.M.A., *Guides* allows for compensation of 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.<sup>11</sup> In this case, however, as appellant's hearing loss is not ratable, he is not entitled to an award for tinnitus.<sup>12</sup> Consequently, the record establishes that appellant is not entitled to a schedule award for his accepted condition.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss is not ratable.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 13, 2004 be affirmed

Issued: June 7, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> *Robert E. Cullison*, 55 ECAB \_\_\_\_ (Docket No. 04-641, issued June 2, 2004).

<sup>12</sup> *Id.*

<sup>13</sup> If a claimant's employment-related hearing loss worsens in the future, he or she may apply for a schedule award for any ratable impairment. *See Robert E. Cullison*, *supra* note 11; *Richard Larry Enders*, 48 ECAB 184 (1996). Although the Office accepted that appellant sustained employment-related binaural hearing loss and Dr. Kanok recommended hearing aids, the record does not indicate that appellant has requested payment for hearing aids. As the Office has not issued a decision adjudicating this aspect of the claim, it is not before the Board in the present appeal. *See* 20 C.F.R. § 501.2(c).