United States Department of Labor
Employees' Compensation Appeals Board

JIMMY D. CORNETT, Appellant	)	
and	)	**Docket No. 05-268**
	)	**Issued: March 24, 2005**
TENNESSEE VALLEY AUTHORITY, PARADISE FOSSIL PLANT, Drakesboro, KY, Employer	)	

Appearances:
Jimmy D. Cornett, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 8, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated August 12, 2004, granting him a schedule award for a binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

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

FACTUAL HISTORY

On January 27, 2004 appellant, then a 54-year-old maintenance mechanic machinist foreman, filed an occupational disease claim for a hearing loss caused by noise exposure in the course of his federal employment. The Office accepted his claim for binaural hearing loss.

The Office referred appellant to Dr. Linda Mumford, an otolaryngologist and an Office referral physician, for audiometric testing and otologic evaluation. Dr. Mumford submitted a report detailing her examination on March 30, 2004 with an accompanying audiogram made on the same day. She provided an impression of mild high frequency sensorineural hearing loss in the right ear and severe hearing loss in the left ear caused by noise exposure. An audiogram performed on March 30, 2004 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear decibels 30, 30, 25 and 20; left ear decibels 25, 20, 25 and 50. Dr. Mumford opined that the audiogram demonstrated that appellant's noise exposure at the employing establishment caused his hearing loss.

On June 1, 2004 appellant filed a claim for compensation, requesting a schedule award for his hearing loss.

In a report dated June 23, 2004, the Office's district medical adviser reviewed Dr. Mumford's report and concluded that appellant had a three percent binaural hearing loss caused or aggravated by his federal employment. He noted that appellant's date of maximum medical improvement was March 30, 2004, the date of Dr. Mumford's examination.

By decision dated August 12, 2004, the Office granted appellant a schedule award for six weeks based on a three percent binaural hearing loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] sets 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 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 losses.[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] Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *Id.*

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

[5] *Id.*

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 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

The Office's district medical adviser reviewed the results of the audiometric testing performed on March 30, 2004 for Dr. Mumford and correctly applied the Office's standardized procedures. In a report dated June 23, 2004, he totaled the decibels of 30, 30, 25 and 20 in the right ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second at 105 decibels and divided by 4 to obtain the average hearing loss of 26.25 decibels. This average was then reduced by 25 decibels to equal 1.25 decibels which was multiplied by the established factor of 1.5 to compute a 1.88 percent hearing loss in the right ear. He totaled the losses of 25, 20, 25 and 50 in the left ear at 120 decibels and divided by 4 to obtain the average hearing loss of 30 decibels. This average was then reduced by 25 decibels to equal 5 which was multiplied by the established factor of 1.5 to compute a 7.5 hearing loss in the left ear. He then multiplied the 1.88 percent loss in the right ear (the ear with the lesser loss) by 5, added it to the percent loss in the left ear (the ear with the greater loss) and divided the sum by 6 which equals 2.81, which he rounded up to 3 percent in accordance with Office procedures. The evidence of record does not establish that appellant has greater than a three percent binaural hearing loss.

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.[10] Since the binaural hearing loss in this case is three percent, appellant would be entitled to three percent of 200 weeks or 6 weeks of compensation. The Office's August 12, 2004 decision correctly awarded appellant six weeks of compensation for a three percent hearing loss.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[10] 5 U.S.C. § 8107(c)(13)(B).

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a three percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 12, 2004 is affirmed.

Issued: March 24, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member