

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

ALLEN J. SMITH, Appellant)	
)	
and)	Docket No. 05-486
)	Issued: May 10, 2005
)	
DEPARTMENT OF THE ARMY,)	
MISSISSIPPI ARMY NATIONAL GUARD,)	
Jackson, MS, Employer)	
)	

Appearances:
Allen J. Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 21, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 7, 2004, which granted him a schedule award for a two percent monaural hearing loss of the right ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than a two percent monaural hearing loss of the right ear for which he received a schedule award.

FACTUAL HISTORY

On March 16, 2004 appellant, then a 55-year-old air technician, filed a claim for compensation benefits alleging that he sustained a hearing loss due to his federal employment. He became aware of his hearing loss in March 1983 and retired on October 1, 2002.

The employing establishment submitted audiograms taken from June 6, 1987 to March 31, 2001. The audiograms revealed high frequency hearing loss which was not disqualifying and advised that appellant was given hearing protection. A statement of accepted facts dated April 13, 2004 noted that, from 1966 to 1972, appellant was employed in the position of a parachute rigger and was responsible for picking up deceleration parachutes on the runway and parking ramp, and from 1972 to 2002, he was employed in the position of an air technician and parachute rigger in the National Guard for eight hours per day, five days a week, where he worked on the ramp and flight line area around aircraft when the engines were running. During all periods of exposure appellant was provided with hearing protection of foam earplugs and over ear protectors.

Appellant submitted a narrative statement noting that he was exposed to hazardous noise from jet engines from 1966 to 2002. He also noted that the employing establishment provided earplugs and headsets for hearing protection.

By letter dated April 22, 2004, the Office referred appellant to Dr. Michael Brooks, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Brooks performed an otologic evaluation of appellant on May 17, 2004 and audiometric testing was conducted on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 20, 20, 10, and 55 decibels; left ear 20, 20, 10 and 35 decibels. Dr. Brooks determined that appellant sustained a bilateral high frequency sensorineural hearing loss of moderate to severe with low frequency and mid range sensorineural hearing loss secondary to noise exposure at work.

By decision dated May 21, 2004, the Office accepted that appellant sustained a bilateral hearing loss due to workplace exposure to noise.

On July 1, 2004 appellant filed a claim for a schedule award.

On September 2, 2004 an Office medical adviser reviewed Dr. Brooks' report and the audiometric test of May 17, 2004. The medical adviser concluded that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), appellant had a two percent monaural hearing loss.

In a decision dated December 7, 2004, the Office granted appellant a schedule award for a two percent monaural hearing loss. The period of the award ran from May 17 to 24, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule 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 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

An Office medical adviser applied the Office’s standardized procedures to the May 17, 2004 audiogram performed for Dr. Brooks. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 20, 20, 10 and 55 respectively. These decibels were totaled at 105 and were divided by 4 to obtain an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.88 percent loss of hearing for the right ear which was rounded up to 2 percent. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 20, 20, 10 and 35 respectively. These decibels were totaled at 85 and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss for the left ear. The lesser loss of zero is multiplied by five, then added to the greater loss of two and the total is divided by six to arrive at the amount of the binaural hearing loss of zero percent.

³ *Id.* See also *Jacqueline S. Harris*, 54 ECAB ____ (Docket No. 02-203, issued October 4, 2002).

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

⁵ *Id.*

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).

The Board finds that the Office medical adviser applied the proper standards to the May 17, 2004 audiogram. Under the Office's standardized procedures, there is no basis on which to find more than a two percent loss of hearing in the right ear.¹⁰

CONCLUSION

The Board finds that the Office properly determined that appellant sustained a two percent monaural hearing loss of the right ear.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ On appeal, appellant questions why he received 7.28 days of compensation. For a complete (100 percent) loss of hearing in one ear, 5 U.S.C. § 8107(c)(13)(a) provides for 52 weeks of compensation. Thus a 2 percent hearing loss would entitle appellant to 2 percent of 52 weeks (.02 x 52), which equals 1.04 weeks, or 7.28 days, of compensation.