

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

ANDREW P. BELL, Appellant)	
)	
and)	Docket No. 06-292
)	Issued: April 6, 2006
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Tinton Falls, NJ, Employer)	

Appearances:
Andrew P. Bell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 21, 2005 appellant filed a timely appeal from the October 5, 2005 merit decision of the Office of Workers' Compensation Programs, which found that he had a three percent binaural hearing loss as a result of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award.

ISSUE

The issue is whether appellant has more than a three percent binaural hearing loss.

FACTUAL HISTORY

On December 5, 2003 appellant, then a 50-year-old special agent, filed a claim alleging that his bilateral hearing loss was a result of noise exposure in his federal employment. He did not stop work. The Office referred him, together with a statement of accepted facts, to Dr. Chong S. Kim, an otolaryngologist, for evaluation.

On May 11, 2004 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing thresholds of 25, 15, 30 and 75 decibels in the right ear and 20, 10, 10 and 20 decibels in the left. The test results were determined to be valid and representative of appellant's hearing sensitivity. Dr. Kim diagnosed a high-frequency sensorineural hearing loss on the right side and reported that it was probable that this loss was due to noise exposure in his federal employment.

On July 30, 2004 the Office notified appellant that his claim was accepted for noise-induced hearing loss. On October 14, 2004 appellant filed a claim for a schedule award.

On September 14, 2005 an Office medical adviser reviewed Dr. Kim's findings and determined that appellant had a 17 percent hearing loss on the right, no ratable hearing loss on the left and a 3 percent hearing loss bilaterally. He reported that the loss was most probably due to acoustic trauma.

On October 5, 2005 the Office granted a schedule award for a three percent binaural hearing loss, entitling appellant to six weeks of compensation starting May 11, 2004, the date of maximum medical improvement.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.²

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. Then, a "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 sounds under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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.³ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

³ A.M.A., *Guides* 250.

⁴ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

On occasion, the allowance for monaural loss in each ear, if computed separately, may be greater than the allowance for binaural hearing loss. In such cases, the employee should be given the benefit of the more favorable allowance.⁵

ANALYSIS

According to the audiometry obtained on May 11, 2004, appellant's hearing thresholds were 25, 15, 30 and 75 decibels on the right and 20, 10, 10 and 20 decibels on the left. These total 145 and 60 decibels, respectively, for averages of 36.25 and 15. Subtracting the "fence" of 25 decibels leaves 11.25 on the right and 0 on the left. Multiplying by 1.5 gives a 16.875 percent loss on the right and no loss on the left.⁶

Using the formula for binaural loss, the lesser loss, 0, is multiplied by 5, then added to the greater loss for a total of 16.875. This total is divided by 6 to arrive at a binaural hearing loss of 2.8125 percent. The Office rounded this to three percent and issued its October 5, 2005 schedule award.⁷

Under section 8107 of the Act, 52 weeks of compensation is provided for the complete loss of hearing in 1 ear, while 200 weeks of compensation is provided for the complete loss of hearing in both ears.⁸ Partial losses are compensated proportionately.⁹ This means that appellant is entitled to 8.84 weeks of compensation for the hearing loss in his right ear (52 times 17 percent, or 52 times 0.17) and no compensation for the hearing loss in his left ear (52 times 0). The Office granted 6 weeks of compensation under the formula for binaural hearing loss (200 times 3 percent, or 200 times 0.03). However, because the allowance for monaural hearing loss, computed separately, is greater than the allowance for binaural hearing loss, appellant should be given the benefit of the greater allowance. That is, the Office should award him 8.84 weeks of compensation for his monaural hearing loss instead of the 6 weeks paid for his binaural hearing loss.

Appellant's concern on appeal is the date on which the period of the award begins. He believes the award should begin on April 12, 1999, the date medical reports first indicated that he had a hearing loss. In hearing loss cases, the period covered by a schedule award typically commences on the date of the medical examination and audiogram upon which the Office based

⁵ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001); *Clarence L. Weeks*, 38 ECAB 613 (1987) (quoting FECA Program Memorandum No. 181 (issued November 26, 1974)).

⁶ The hearing loss in appellant's left ear, while measurable, is said to be unratable. Because the average loss is below the "fence" of 25 decibels, his left ear is considered to have no impairment in its ability to hear everyday sounds under everyday conditions.

⁷ Percentages should not be rounded until the final percent for award purposes is obtained. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.0700.4.b(2)(b) (March 2005).

⁸ 5 U.S.C. § 8107(c)(13).

⁹ *Id.* at § 8107(c)(19).

the schedule award.¹⁰ This is generally referred to as the date of maximum medical improvement. Moving the period of the award back in time will not gain appellant additional compensation. Section 8107 of the Act provides only a finite amount of compensation for permanent impairment. Appellant is entitled to 8.84 weeks of compensation for the hearing loss in his right ear. The amount payable under the schedule provision does not take into account the effect that the impairment may have on employment opportunities, sports, hobbies or other lifestyle activities.¹¹ This is true regardless of when the period of the award begins.¹²

CONCLUSION

The Board finds that appellant has no more than a 3 percent binaural hearing loss, but because his 17 percent monaural hearing loss entitles him to more compensation, the Office shall give him the benefit of the greater allowance.

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ See generally *Franklin L. Armfield*, 28 ECAB 445 (1977) (discussing when the period of the award should begin in hearing loss cases).

¹¹ See *Ruben Franco*, 54 ECAB 496 (2003).

¹² *Id.* (explaining that the amount of compensation paid in hearing loss cases is generally not adversely affected by the date that the period of the award begins).