

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

P.L., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
CORPS OF ENGINEERS, New Orleans, LA,
Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 06-1134
Issued: August 15, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 18, 2006 appellant filed a timely appeal from the March 15, 2006 merit decision of the Office of Workers' Compensation Programs, which found that he had a 25 percent binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant has more than a 25 percent binaural hearing loss.

FACTUAL HISTORY

On April 19, 2005 appellant, then a 54-year-old small craft operator, filed a claim alleging that the loss of hearing and loud ringing in his ears was a result of his federal employment. The Office referred him, together with the medical record and a statement of accepted facts, to Dr. David G. Fourrier, an otolaryngologist, for evaluation.

Dr. Fourrier examined appellant on July 6, 2005. He diagnosed bilateral sensorineural hearing loss and indicated that this was due at least in part to noise exposure in federal

employment. Dr. Fourrier noted that serial audiograms since 1981 had documented a progressive sensorineural hearing loss. An audiogram obtained for him on July 6, 2005 showed hearing thresholds of 40, 35, 40 and 45 decibels in the right ear and 35, 40, 55 and 70 decibels in the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), respectively. Dr. Fourrier reported that the audiometric results were valid and representative of appellant's hearing sensitivity. He noted that speech discrimination scores were decreased at 84 percent in the right ear and 80 percent in the left. Dr. Fourrier concluded that appellant needed hearing aids. On a form supplied by the Office, he calculated that appellant had a 26 percent binaural hearing impairment. Dr. Fourrier added five percent to this figure for tinnitus impacting appellant's ability to perform activities of daily living.

An Office medical adviser reviewed Dr. Fourrier's findings. He explained that the audiometry obtained on July 9, 2005 was used because it was the most recent, it met the Office standards and it was an integral part of Dr. Fourrier's evaluation. The Office medical adviser reported that appellant had a 25 percent binaural hearing loss.

On August 10, 2005 the Office accepted appellant's claim for binaural hearing loss and authorized hearing aids.

On November 30, 2005 appellant filed a claim for a schedule award.

In a decision dated March 15, 2006, the Office issued a schedule award for a 25 percent binaural hearing loss.

On appeal, appellant questions the rating of his hearing loss and asks whether the period of the award -- July 6, 2005 to June 20, 2006 -- means that there is no damage before or after the period.

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 cps, 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

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).

loss.³ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

ANALYSIS

According to the audiometry obtained for Dr. Fourrier on July 6, 2005, appellant's hearing thresholds were 40, 35, 40 and 45 decibels in the right ear and 35, 40, 55 and 70 decibels in the left. These total 160 and 200 decibels, respectively, for averages of 40 and 50. Subtracting the "fence" of 25 decibels leaves 15 and 25 decibels.⁵ Multiplying by 1.5 to determine monaural impairments yields percentage losses of 22.5 in the right ear and 37.5 in the left. To determine binaural hearing loss, the lesser loss, 22.5, is multiplied by 5 and then added to the greater loss, 37.5. This result, 150, is divided by 6 for an estimated binaural hearing loss of 25 percent. This is what the Office awarded.⁶

The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to 5 percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."⁷ The A.M.A., *Guides* advises as follows:

"Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment."⁸

It is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. When Dr. Fourrier, the Office referral physician, evaluated appellant, he obtained objective data on the severity of appellant's hearing loss, including decreased speech discrimination scores, and estimated an additional five percent binaural impairment due to tinnitus impacting the ability to perform activities of daily living. This is consistent with the A.M.A., *Guides*. The Office medical

³ A.M.A., *Guides* at 250.

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

⁵ Because the average hearing thresholds are both over 25 decibels, appellant is considered to have a binaural impairment in the ability to hear everyday sounds under everyday conditions, but only to the extent that the averages exceed 25 decibels.

⁶ Percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.0700.4.b(2) (September 1994). Dr. Fourrier mistakenly rounded the monaural impairments to 23 and 38 percent before calculating the binaural loss. This had the effect of increasing the binaural rating to 26 percent.

⁷ A.M.A., *Guides* 246 (5th ed. 2001).

⁸ *Id.*

adviser did not address the issue. The Office awarded compensation only for the 25 percent impairment established by recorded hearing thresholds.⁹ The Board will therefore modify the Office's March 15, 2006 decision to find that appellant has a 30 percent binaural hearing loss and will remand the case for payment of appropriate additional compensation.

As for the period of the award, the Act provides a maximum of 52 weeks' compensation for the complete loss of hearing in one ear, and a maximum of 200 weeks' compensation for complete loss of hearing in both ears.¹⁰ Compensation for partial loss is proportionate.¹¹ Compensation for a 30 percent binaural hearing loss is therefore 30 percent of 200 weeks, or 60 weeks of compensation. The finite period of the schedule award does not mean, obviously, that appellant will have no damage to his hearing when the schedule award expires. Rather, Congress provided a fixed number of weeks of compensation for the permanent impairment of listed members, organs and functions of the body.¹² The Board notes that disability for work is not a factor included in rating impairment under a schedule award,¹³ nor does the schedule award take into account the effects of the impairment on sports, hobbies or other lifestyle activities.¹⁴

CONCLUSION

The Board finds that appellant has a 30 percent binaural hearing loss. The 25 percent previously awarded did not include impairment due to tinnitus.

⁹ The computation form that the Office medical adviser completed did not ask whether there was additional impairment due to tinnitus.

¹⁰ 5 U.S.C. § 8107(c)(13).

¹¹ *Id.* at § 8107(c)(19).

¹² The period of the award begins on the date of maximum medical improvement (MMI), which is typically the date of evaluation for schedule award purposes. The A.M.A., *Guides* explains that impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized: "It is understood that an individual's condition is dynamic. MMI refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an impairment has reached MMI, a permanent impairment rating may be performed." A.M.A., *Guides* at 19.

¹³ See *Donald S. Saunders*, 41 ECAB 516 (1990).

¹⁴ See *Ruben Franco*, 54 ECAB 496 at fn. 6 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2006 decision of the Office of Workers' Compensation Programs be modified to find that appellant has a 30 percent binaural hearing loss and is affirmed as modified.

Issued: August 15, 2006
Washington, DC

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

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