

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

A.R., Appellant)
and) Docket No. 06-1961
DEPARTMENT OF THE ARMY, CORPUS)
CHRISTI ARMY DEPOT, Corpus Christi, TX,)
Employer) Issued: December 22, 2006

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 22, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 11, 2006, which granted a schedule award for appellant's binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

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 May 2, 2006 appellant, then a 61-year-old retired aircraft electrician, filed an occupational disease claim alleging that he developed binaural hearing loss in the performance of duty.

In support of his claim, appellant submitted a statement and numerous audiograms taken on behalf of the employing establishment. He worked at the employing establishment from 1968 to 2006 and was exposed to noise from various sources. In an undated personal statement, submitted in connection with his claim, appellant noted that, between 1974 and his retirement in 2006, he "was exposed to an average of about seven to eight hours daily to such noises as drill motors, rivet guns, impact guns, pneumatic tools, air blowers, hammers, pounding rivets out of metal structures, electric saws cutting stainless steel and aluminum sheet metal pieces and also high speed grinders, mechanics installing hi-lock rivets." He was exposed to similar noises during his 1971 to 1974 employment as an aircraft electrician apprentice and as a parts and equipment cleaner between 1968 and 1971. The employing establishment provided earplugs or earmuffs for hearing protection.

In an April 6, 2006 medical report, Dr. George H. Fisher, a Board-certified otolaryngologist, noted an impression of "[b]ilateral neurosensory hearing loss, noise induced." Dr. Fisher's report was accompanied by an April 6, 2006 audiogram. Appellant also submitted several other medical reports, including a medical history.

On May 17, 2006 the Office requested additional information from appellant and the employing establishment.

On May 26, 2006 the Office referred appellant to Dr. Paul W. Loeffler, a Board-certified otolaryngologist, for audiometric testing and otologic evaluation. Dr. Loeffler submitted a June 9, 2006 report detailing the examination and a June 9, 2006 audiogram that was performed on his behalf. He recorded an impression of mild, high-frequency sensorineural hearing loss. Dr. Loeffler checked a box on the form medical report indicating that it was his opinion that appellant's hearing loss was due to his federal employment. He stated that the rationale behind his opinion was "work history and physical exam[ination]." An audiogram performed June 9, 2006 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz and revealed the following decibel losses: 10, 20, 35 and 40 for the right ear; 10, 25, 35 and 45 for the left ear. On June 9, 2006 Dr. Loeffler stated that appellant "has a workplace environment that is enough to cause some hearing loss. He has no other medical facts that could contribute to it." Dr. Loeffler concluded that appellant needed hearing aids.

On July 6, 2006 an Office medical adviser reviewed Dr. Loeffler's audiometric test results. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he concluded that appellant had a three percent binaural hearing loss. The medical adviser concurred that appellant's hearing loss was caused or aggravated by exposure to occupational noise in the course of his federal employment. Appellant's date of maximum medical improvement was June 9, 2006, the date of Dr. Loeffler's examination. The medical adviser also recommended that hearing aids be authorized.

On July 14, 2006 the Office accepted appellant's claim for bilateral hearing loss and hearing aids were authorized. On July 28, 2006 appellant submitted a claim for a schedule award for his binaural hearing loss.

By decision dated August 11, 2006, the Office granted a schedule award for three percent binaural hearing loss. The period of the award ran from June 9 through July 20, 2006.

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 schedule 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 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 hertz, 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

The Office medical adviser applied the Office's standardized procedures to the June 9, 2006 audiogram performed on Dr. Loeffler's behalf. Appellant's June 9, 2006 audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 hertz levels and revealed decibel losses of 10, 25, 35 and 45 respectively for the left ear. The total decibel loss in the left ear is 115 hertz. When divided by 4, the result is an average hearing loss of 28.75 decibels. The average loss of 28.75 decibels is reduced by the "fence" of 25 decibels to equal 3.75 decibels,

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (2002).

³ *Id.*

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).

which when multiplied by the established factor of 1.5, results in a 5.625 percent monaural hearing loss for the left ear.

Testing for the right ear at the frequencies of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 10, 20, 35 and 40 decibels respectively, for a total of 105 decibels. When divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 decibels is reduced by the “fence” of 25 decibels to equal 1.25 decibels, which when multiplied by the established factor of 1.5, results in a 1.875 percent monaural hearing loss for the right ear.

The 1.875 percent monaural hearing loss for the right ear, when multiplied by 5 (as it is the lesser loss), yielded a product of 9.375. The 9.375 was then added to the 5.625 percent hearing loss for the left ear to obtain a total of 15. The 15 was then divided by 6, in order to calculate a binaural hearing loss of 2.5 percent. The Office medical adviser rounded the 2.5 percent up to 3 percent binaural hearing loss. Accordingly, the evidence of record does not establish that appellant has more than a three percent binaural hearing loss.

On appeal, appellant asserts that he should receive an amount of compensation that covers a greater period of time. However, under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.¹⁰ Since appellant has a three percent binaural hearing loss, he is entitled to three percent of 200 weeks of compensation, or 6 weeks. Appellant’s schedule award ran from June 9 to July 20, 2006, equal to six weeks of compensation.¹¹ There is no other recent audiogram of record, reviewed by a physician, that shows a higher degree of hearing loss. Thus the Office properly determined the number of weeks for which appellant is entitled to compensation under the schedule award.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained greater than three percent binaural hearing loss, for which he received a schedule award.

¹⁰ 5 U.S.C. § 8107(c)(13)(B).

¹¹ Appellant’s period of compensation began on Friday, June 9, 2006 and ran through the end of the day on Thursday, July 20, 2006.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board