

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

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**STANFORD E. MOSLEY, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL AIR  
STATION OCEANA, Virginia Beach, VA,  
Employer**

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**Docket No. 06-85  
Issued: February 14, 2006**

*Appearances:*  
*Stanford E. Mosley, 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 October 13, 2005 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated September 23, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that he has greater than a two percent hearing loss in his left ear, for which he received a schedule award, and that he sustained a ratable hearing loss in his right ear entitling him to a schedule award.

**FACTUAL HISTORY**

On January 28, 2004 appellant, then a 56-year-old firefighter, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his federal employment, including exposure to sirens and other loud noises while responding to emergencies.

By letter dated February 3, 2004, the Office advised appellant that the evidence submitted was insufficient to establish his claim and provided him 30 days to provide medical evidence.

Appellant submitted a position description and an undated narrative statement indicating that he had no hearing loss in 1977 when he became a firefighter, but that his hearing had substantially worsened over the course of his employment. He submitted numerous reports of audiograms performed by the employing establishment from January 13, 1983 through October 15, 2003, reflecting hearing loss in both ears.

The Office referred appellant, together with a statement of accepted facts, to Dr. Richard L. Prass, a Board-certified otolaryngologist, for an evaluation to determine the cause and extent of his hearing loss. He examined appellant and obtained an audiogram on April 19, 2004. In a report dated May 3, 2004, Dr. Prass reviewed the results of the audiogram and opined that appellant had a bilateral high frequency sensorineural hearing loss consistent with his occupational noise exposure. He noted that there was mild symmetry with worse hearing on the left, consistent with the fact that the siren noise was much louder on the left due to an open window. Dr. Prass stated that appellant's hearing was normal up to approximately three kilohertz (kHz) in the right ear and two kHz in the left ear, but that there was a mild to moderate notching of hearing loss at higher frequencies. Appellant's word recognition scores were 92 percent and 76 percent in the right and left ears respectively at conversational speech levels. His word recognition scores were 75 percent and 84 percent at 90 decibels speech presentation.

The Office accepted appellant's claim for "noise-induced hearing loss (bilateral)."

Appellant requested a schedule award on December 30, 2004.

On February 28, 2005 the Office referred the case to the district medical adviser.

Appellant submitted a report dated March 3, 2005 from Dr. Willie E. Thompson, a treating physician. Based upon a report of an October 15, 2003 audiogram, he opined that appellant had a 7.5 percent hearing loss in the left ear and a 0 percent hearing loss in the right ear for schedule award purposes. Dr. Thompson stated that his opinion was based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and indicated that the date of maximum medical improvement was October 15, 2003.

In a report dated August 6, 2005, the district medical adviser, Dr. Duane Taylor, a Board-certified otolaryngologist, concurred with Dr. Prass' opinion that appellant's hearing loss was causally related to work-related noise exposure. After reviewing the April 19, 2004 audiogram report and the fifth edition of the A.M.A., *Guides*, Dr. Taylor addressed testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) which revealed decibel losses of 20, 20, 20 and 25, respectively and in the left ear decibel losses of 15, 20, 25 and 45, respectively. Dr. Taylor calculated appellant's hearing loss pursuant to Form CA-51 provided by the Office. Appellant's decibel losses for the right ear were totaled at 85 and divided by 4 to obtain the average hearing loss per cycle of 21.25. The average of 21.25 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear. The 0 was then multiplied by 1.25,

resulting in a 0 percent loss for the right ear. Accordingly, Dr. Taylor found that appellant had no ratable loss in the right ear. Appellant's decibel losses for the left ear were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by the 25 decibel fence to equal 1.25 decibels for the left ear. The 1.25 was then multiplied by 1.5, resulting in a 1.88 percent loss for the left ear.

By decision dated September 23, 2005, the Office granted appellant a schedule award for a two percent monaural hearing loss. The award ran for 1.04 weeks from April 19 to 26, 2005.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> provides for compensation to employees sustaining permanent loss or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter in the sound discretion of the Office. For consistent results and to insure equal justice, the Board has authorized 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 Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>3</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.<sup>4</sup> The average is then reduced by the 25 decibel fence.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</sup> 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.<sup>7</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> A.M.A., *Guides* at 250.

<sup>4</sup> *Id.*

<sup>5</sup> The decibel "fence" is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 decibels or less. See A.M.A., *Guides* at 250.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *David W. Farrall*, 56 ECAB \_\_\_\_ (Docket No. 04-2142, issued February 23, 2005). See also, *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

### ANALYSIS

Dr. Taylor applied the correct sections of the fifth edition of the A.M.A., *Guides* and properly applied the Office's standardized procedures to the April 19, 2005 audiogram performed for Dr. Prass. Testing for the right ear revealed decibel losses of 20, 20, 20 and 25 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss per cycle of 21.25. The average of 21.25 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear. The 0 was multiplied by 1.5, resulting in a 0 percent loss for the right ear. Testing for the left ear revealed decibel losses 15, 20, 25 and 45 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by 25 decibels to equal 1.25 decibels for the left ear. The 1.25 was multiplied by 1.5 resulting in a 1.88 percent loss for the left ear. In its September 23, 2005 decision, the Office properly rounded up to find a two percent monaural loss for the left ear.<sup>9</sup>

The Board finds that Dr. Taylor applied the proper standards to the findings stated in Dr. Prass' May 3, 2004 report and accompanying April 19, 2004 audiogram performed on his behalf. The result is a two percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear. The Board further finds that Dr. Taylor properly relied upon the April 19, 2004 audiogram as it was part of Dr. Prass' evaluation and met all the Office's standards.<sup>10</sup>

The schedule award provision of the Act specifies the number of weeks of compensation to be awarded for loss of hearing. For total loss of hearing in one ear, the Act provides for 52 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate; therefore, a two percent monaural hearing loss equals 1.04 weeks of compensation.

### CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss in his right ear entitling him to a schedule award. The Board also finds that appellant has no more than a two percent loss of hearing in the left ear for which he received a schedule award.

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<sup>9</sup> The Office rounds the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2005 is affirmed.

Issued: February 14, 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