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

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| **JAMES M. HARRINGTON, Appellant** | ) | |
| **and** | ) | **Docket No. 06-807** |
| | ) | **Issued: July 3, 2006** |
| **DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Pensacola, FL, Employer** | ) | |

*Appearances:*
*James M. Harrington, 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 February 15, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 30, 2006 finding that he had a two percent hearing loss of the left ear for which he received a schedule award. 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 more than a two percent hearing loss of the left ear, for which he received a schedule award.

### ***FACTUAL HISTORY***

On August 10, 2005 appellant, then a 53-year-old machinist/model maker, filed an occupational disease claim alleging that he sustained binaural hearing loss while in the performance of duty. He was first aware of his condition on January 1, 1992 and that it was caused by his employment on January 10, 1992. Appellant did not stop work.

In a report received by the Office on September 16, 2005, appellant stated that he had been exposed to loud noises from 1971 to 1978 as a mechanic in the U.S. Air Force, and from 1979 to 1984 in the civilian sector as a welding machinist and machinist. He started work for the Navy in 1984 as a machinist and continues in that position. Appellant related his hobby of marksmanship from 1980 to 1985. During employment in all enumerated positions appellant was exposed to loud noise. The record includes reference audiogram tests dated March 25, 1985 and August 5, 1992, and other audiogram test results from July 29, 1992 to November 16, 2004.[1]

On October 3, 2005 the Office referred appellant, a statement of accepted facts and medical records to Dr. Steven Toner, a Board-certified otolaryngologist, for a second opinion evaluation concerning his hearing loss. In a report dated October 18, 2005, Dr. Toner stated that appellant had work-related bilateral sensorineural hearing loss, worse on the left, and supported his opinion based on an audiogram evaluation performed that day.

On November 8, 2005 an Office medical adviser reviewed appellant's medical record and determined that appellant had work-related bilateral sensorineural hearing loss and a two percent schedule award for monaural left hearing loss.

In a decision dated November 9, 2005, the Office accepted appellant's claim for a noise-induced bilateral sensorineural hearing loss. On November 16, 2005 appellant filed a claim for a schedule award.

The Office, on January 30, 2006, issued appellant a schedule award for two percent hearing loss of the left ear for a period of 1.04 weeks from October 18 to 25, 2005. The Office stated that the date of maximum medical improvement was October 18, 2005.

## ***LEGAL PRECEDENT***

Section 8107 of the Federal Employees' Compensation Act[2] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[3] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[4] The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[5]

[1] Mild hearing loss in the left above 2,000 hertz was noted on August 17, 1992.

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8107.

[4] *Renee M. Straubinger*, 51 ECAB 667 (2000).

[5] 20 C.F.R. § 10.404.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the losses at each frequency are added up and averaged.[6] 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.[7] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[8] 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.[9] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[10]

## ***ANALYSIS***

In developing the claim, the Office referred appellant to Dr. Toner who examined appellant and had an audiogram performed on his behalf on October 18, 2005. After Dr. Toner determined that appellant's hearing loss was employment related, an Office medical adviser reviewed this audiogram to determine the extent of appellant's hearing loss.

In reviewing appellant's October 18, 2005 audiogram, the frequency levels, for the right ear, recorded at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 20, 15 and 15, respectively, for a total of 55 decibels. This figure, when divided by 4, results in an average hearing loss of 13.75 decibels. The average of 13.75 decibels was then reduced by 25 decibels, which resulted in a 0 percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 10 and 60 hertz respectively, for a total loss of 105 decibels which, when divided by 4, results in an average 26.25 decibels. When reduced by the 25 decibel fence, this results in 1.25 which is then multiplied by the factor of 1.5 which results in a 1.875 percent monaural hearing loss, rounded up to 2 percent, of the left ear. Accordingly, the medical adviser properly relied on the Office's standardized procedures in determining that appellant had a two percent left ear hearing loss and a nonratable right ear hearing loss. There are no other audiograms that conform with the Office's standards for evaluating hearing loss which show a greater impairment.

Appellant's concern on appeal is the date on which the period of the award begins. He contends that the award should begin on January 1, 1992, the date he was aware initially of his hearing loss, and run to October 18, 2005. In hearing loss cases, the period covered by a schedule award commences on the date of the medical examination and audiogram upon which

[6] A.M.A., *Guides* 250 (5th ed. 2001).

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *David W. Ferrall*, 56 ECAB ___ (Docket No. 04-2142, issued February 23, 2005).

the Office based the schedule award.[11] 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.[12] Appellant is entitled to 1.04 weeks of compensation for the hearing loss in his left ear based on Dr. Toner's medical examination and audiogram performed on October 18, 2005, the date of maximum medical improvement and the appropriate date for the commencement of the schedule award.

## ***CONCLUSION***

Appellant failed to establish that he has more than a two percent permanent hearing loss in the left ear.

[11] *See generally Franklin L. Armfield*, 28 ECAB 445 (1977) (discussing when the period of the award should begin in hearing loss cases); *Mark A. Holloway*, 55 ECAB ___ (Docket No. 03-2144, issued February 13, 2004) (determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record, and is usually considered to the date of the evaluation by the attending physician which is accepted as definitive by the Office).

[12] Under section 8107 of the Act, 52 weeks of compensation is provided for the complete loss of hearing in one ear, while 200 weeks of compensation is provided for the complete loss of hearing in both ears. Partial losses are compensated proportionately. This means that appellant is entitled to 1.04 weeks of compensation for the hearing loss in his left ear (52 times 2 percent) and no compensation for the hearing loss in his right ear (52 times 0). The hearing loss in appellant's right ear, while measurable, is unratable because the average loss is below the fence of 25 decibels, and is considered to have no impairment in its ability to hear everyday sounds under everyday conditions.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 30, 2006 is affirmed.

Issued: July 3, 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