

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

---

**THOMAS O. BOUIS, Appellant**

**and**

**DEPARTMENT OF THE TREASURY, U.S.  
MINT, Washington, DC, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-692  
Issued: June 7, 2006**

*Appearances:*  
*Thomas O. Bouis, 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 January 30, 2006 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated January 13, 2006. 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 sustained a ratable hearing loss entitling him to a schedule award.

**FACTUAL HISTORY**

On November 4, 2002 appellant, then a 52-year-old manager of occupational safety and health, filed an occupational disease claim alleging that he sustained a hearing loss due to factors of his federal employment, including exposure to noise from production equipment. On November 4, 2002 appellant also submitted a request for a schedule award.

Based on the June 28, 2004 second opinion report of Dr. Howard L. Shaffer, a Board-certified otolaryngologist, the Office accepted appellant's claim for bilateral hearing loss and authorized hearing aids. Dr. Shaffer submitted audiological testing done on his behalf.

The Office referred the record to the Office medical adviser, Dr. Daniel Zimmerman, a Board-certified internist, for a determination of impairment. In a July 26, 2004 report, Dr. Zimmerman found that appellant's loss of hearing was not ratable pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> Based on the June 28, 2004 audiogram, Dr. Zimmerman addressed testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps), which revealed right ear decibel losses of 10, 15, 15 and 45 and left ear decibel losses of 15, 15, 15 and 55, respectively. 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 1.5, resulting in a 0 percent loss for the right ear. Accordingly, Dr. Zimmerman found that appellant had no ratable loss in the right ear. Appellant's decibel losses for the left ear were totaled at 100 and divided by 4 to obtain the average hearing loss per cycle of 25. The average of 25 was then reduced by the 25 decibel fence to equal 0 decibels for the left ear. The 0 was then multiplied by 1.5, resulting in a 0 percent loss for the left ear.

By decision dated September 22, 2004, the Office found that appellant was not entitled to a schedule award because his hearing loss did not exceed the average of 25 decibels in either ear.

Appellant requested an oral hearing on September 27, 2004. At a November 16, 2005 hearing, appellant disagreed with the Office's reliance on the A.M.A., *Guides* as the basis for rating hearing loss impairments for schedule award purposes. Appellant submitted a November 16, 2005 report from Amy Kirby, an audiologist, who stated that appellant had a severe high frequency bilateral hearing loss which required digital hearing aids. Ms. Kirby opined that appellant had a two percent hearing impairment in his left ear and a zero percent hearing loss in the right ear.

By decision dated January 13, 2006, the Office hearing representative affirmed the Office's September 22, 2004 schedule award denial, finding that Dr. Zimmerman's report provided the only impairment rating consistent with the A.M.A., *Guides* and Office protocols.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</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

---

<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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 ensure 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>3</sup>

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 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>

### ANALYSIS

Dr. Zimmerman applied the correct sections of the fifth edition of the A.M.A., *Guides* and the Office's standardized procedures to the June 28, 2004 audiogram performed for Dr. Shaffer. The otolaryngologist concluded that appellant sustained a bilateral hearing loss related to long-term exposure to noise in the course of his federal employment. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 15 and 45. These decibel losses were totaled at 85 and divided by four 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 of 15, 15, 15 and 55, respectively. These decibel losses were totaled at 100 and divided by 4 to obtain the average hearing loss per cycle of 25. The average of 25 was then reduced by 25 decibels to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. Accordingly, the Office medical adviser correctly calculated appellant's hearing loss under the Office's standardized procedures to be nonratable for both the right and left ears.

---

<sup>3</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>4</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<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* 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).

Appellant submitted a November 16, 2005 report from Ms. Kirby, an audiologist, who stated that appellant had a severe high frequency bilateral hearing loss which required digital hearing aids. Ms. Kirby opined that appellant had a two percent hearing impairment in his left ear and a zero percent hearing loss in the right ear. Audiologists are not included among the list of healthcare professionals recognized as a physician under the Act.<sup>9</sup> Therefore, Ms. Kirby's opinion lacks probative value. Appellant contended that the Office erroneously relied upon the A.M.A., *Guides* as the basis for rating his impairment. In *Harry D. Butler*,<sup>10</sup> the Board addressed the Office's adoption of the A.M.A., *Guides* as a standard by which to uniformly evaluate claims for schedule awards under 5 U.S.C. § 8107.

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings. This resulted in a calculation of zero percent binaural (both ears) hearing loss. The loss is not ratable under these standards in that the average loss of hearing levels in both ears at 500, 1,000, 2,000 and 3,000 cps is 25 decibels or less and, therefore, not compensable for schedule award purposes.<sup>11</sup> The Board finds that, although appellant has sustained an employment-related loss of hearing, it is not ratable for purposes of a schedule award under the Act.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

---

<sup>9</sup> 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides in pertinent part: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

<sup>10</sup> 43 ECAB 859 (1992).

<sup>11</sup> A.M.A., *Guides* 250.

<sup>12</sup> *Royce L. Chute*, 36 ECAB 202 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 13, 2006 is affirmed.

Issued: June 7, 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