

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

JOHN R. KAUFFMAN, Appellant

and

**DEPARTMENT OF THE AIR FORCE, KELLY
AIR FORCE BASE, San Antonio, TX, Employer**

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**Docket No. 06-715
Issued: June 21, 2006**

Appearances:
John R. Kauffman, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 6, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award denial dated January 18, 2006. Under 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 a ratable hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

Appellant, a 56-year-old electrical equipment repairman, filed a claim for benefits on April 1, 2005, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. He first became aware he had sustained a hearing loss causally related to his employment on October 24, 1990. Appellant was exposed to noise while working as a heavy mobile equipment operator from 1989 to the present. He was exposed to noise from diesel trucks, tanks, air compressors, air wrenches, overhead cranes, gasoline-operated forklifts and industrial shop noise.

On June 15, 2005 the Office referred appellant and a statement of accepted facts to Dr. Bibhas Bandy, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant. The audiologist performing a July 27, 2005 audiogram for Dr. Bandy noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 20, 15, 20 and 25 decibels; left ear -- 20, 20, 15 and 40 decibels. Dr. Bandy provided a December 15, 2005 report in which he attributed appellant's hearing loss to his federal employment exposure.

In a memorandum dated December 29, 2005, an Office medical adviser found on the basis of Dr. Bandy's July 27, 2005 audiogram results and calculations that appellant had a zero percent binaural hearing loss.

In a decision dated January 18, 2006, the Office accepted appellant's claim for a hearing loss but found that appellant had not sustained a ratable hearing loss which would entitle him to a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and the implementing federal regulation sets forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule. However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office. To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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 1.5 to arrive at the percentage of monaural 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 loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.

ANALYSIS

An Office medical adviser applied the Office's standardized procedures to the July 27, 2005 audiogram obtained by Dr. Bandy, a Board-certified otolaryngologist.¹ According to the

¹ The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 20, 15, 20 and 25 respectively. These totaled to 80 decibels which, when divided by 4, obtains an average hearing loss of 20 decibels. The average of 20 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5, totals a zero percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 15 and 40 respectively. These totaled 95, which, when divided by 4, obtains an average hearing loss of 23.75 decibels. The average of 23.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5, totals a 0 percent hearing loss in the left ear. The Office medical adviser properly determined that appellant did not have a ratable hearing loss causally related to factors of his federal employment.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides*, to determine that appellant has a zero percent binaural hearing loss. The Board will affirm the January 18, 2006 Office decision finding that appellant was not entitled to a schedule award for his accepted hearing loss.²

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

² See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).