

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

PAUL C. McWHORTER, Appellant

and

**DEPARTMENT OF THE ARMY, CENTRAL
ENERGY PLANT, Fort Campbell, KY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-733
Issued: June 6, 2006**

Appearances:
Debra A. Wall, Esq., for the appellant
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 6, 2006 appellant filed a timely appeal of a November 29, 2005 decision of the Office of Workers' Compensation Programs with respect to his schedule award for a hearing loss. 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 44 percent binaural hearing loss.

FACTUAL HISTORY

On May 3, 2002 appellant, then a 72-year-old former boiler operator, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss causally related to his federal employment. The reverse of the claim form indicated that appellant had a prior claim (OWCP No. 060429168) for hearing loss. In a narrative statement, appellant indicated that he had already received an award for a 22 percent binaural hearing loss pursuant to the prior

claim filed in January 1989. He retired in 1994 but his hearing deteriorated. Appellant submitted audiograms performed while in federal employment.

The Office referred appellant, medical records and a statement of accepted facts to Dr. James Fordice, an otolaryngologist. In a report (CA-1332) dated January 13, 2003, Dr. Fordice opined that appellant had bilateral sensorineural hearing loss causally related to his federal employment. The accompanying audiogram reported the following decibel levels for the right ear at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 20, 40, 85 and 85 decibels. For the left ear at the same levels, the results were 20, 20, 85 and 90 decibels.

An Office medical adviser reviewed the evidence and, applying the formula established in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) for binaural hearing loss, determined that appellant had a 44 percent binaural hearing loss.

By decision dated February 23, 2004, the Office issued a schedule award for an additional 22 percent bilateral hearing loss. The period of the award was 44 weeks of compensation commencing January 13, 2003.¹

Appellant requested reconsideration and submitted an audiogram dated December 22, 2003. The audiogram did not show results at 3,000 Hz. In a report dated August 16, 2004, an Office medical adviser noted that the audiogram did not comply with Office requirements, and would not show more than 44 percent impairment in any case. By decision August 18, 2004, the Office denied modification of its prior decision.

On November 18, 2004 appellant again requested reconsideration and submitted a September 17, 2004 audiogram. The audiogram did not provide results at 3,000 Hz or audiometric calibration information. By decision dated February 8, 2005, the Office denied modification. The Office explained the requirements for medical evidence in occupational hearing loss claims.

Appellant requested reconsideration and submitted a September 13, 2005 report from Dr. G. Ted Brandon, an otolaryngologist, and audiograms dated September 13 and April 28, 2005, with an accompanying audiologist narrative report dated April 28, 2005. The audiologist reported that appellant had a 40 percent binaural hearing loss. Dr. Brandon provided a history and results on examination, opining that he agreed with the audiologist that appellant had a 40 percent binaural hearing loss. The audiogram, dated September 13, 2005, revealed the following results at 500, 1,000, 2,000 and 3,000 Hz: for the right ear -- 20, 20, 80, and 95 decibels and for the left ear -- 15, 20, 80 and 90 decibels.

By decision dated November 29, 2005, the Office reviewed the case on its merits and denied modification. The Office found that the evidence did not establish more than 44 percent binaural hearing loss.

¹ 5 U.S.C. § 8107(c)(13)(B) provides 200 weeks of compensation for complete binaural hearing loss; 22 percent of 200 weeks is 44 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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 determination is a matter which rests 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* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.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 Hz the levels at each frequency are added up and averaged.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

The Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office procedure manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise,

² 5 U.S.C. §§ 8101-8193.

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

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *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).

a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.⁹

ANALYSIS

The record indicates that appellant has received schedule awards for a 44 percent binaural hearing loss.¹⁰ The second opinion physician, Dr. Fordice, provided a report with accompanying audiometric testing that showed appellant had decibel levels for the right ear of 20, 40, 85 and 95 and the relevant frequencies of 500, 1,000, 2,000 and 3,000 Hz. Applying the formula above, the average is 57.50 and then the “fence” of 25 is deducted for a balance of 32.50. 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.¹¹ The balance is multiplied by 1.5 for a monaural hearing loss in the right ear of 48.75. For the left ear, the audiogram results of 20, 40, 85 and 85 are applied to the same formula resulting in a 43.13 percent monaural hearing loss for the left ear. Using the formula noted above to determine binaural loss, the 43.13 is multiplied by 5 and added to the greater loss of 48.75, then divided by 6, for a binaural loss of 44.06 percent. The Office rounds the calculated percentage of impairment to the nearest whole point.¹² The record, therefore, indicated that based on the evidence provided by Dr. Fordice the Office properly determined that appellant had a 44 percent binaural hearing loss.

Appellant argues that he has more than 44 percent impairment, but this is a medical issue and must be resolved by probative medical evidence that meets the requirements established by the Office for hearing loss evaluations. Some of the audiograms submitted by appellant did not meet this requirement as they were not accompanied by otologic examination and did not comport with the requirements for audiometric testing. With respect to the evidence from Dr. Brandon, this did not show an impairment greater than 44 percent. For example, the September 13, 2005 audiogram showed results for the right ear of 20, 20, 80 and 95 for the right ear, and 15, 20, 80 and 90 for the left ear. Applying the established formula, this results in a right ear monaural loss of 43.13 percent, a left ear loss of 39.37 percent, for a binaural loss of exactly 40.00 percent. Dr. Brandon agreed that the binaural loss was 40 percent. Since appellant had received schedule awards for 44 percent, the probative evidence does not establish that appellant is entitled to an additional impairment for binaural hearing loss.

CONCLUSION

The evidence did not establish that appellant has more than a 44 percent binaural hearing loss.

⁹ See *Raymond H. VanNett*, 44 ECAB 480 (1993); *George A. Cooper*, 40 ECAB 296 (1988); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹⁰ Although the record contains a memorandum stating there was no need to combine the two hearing loss claims, the claims should be combined to provide the most complete background for any future development of the case.

¹¹ *Supra* note 4.

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2005 is affirmed.

Issued: June 6, 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