

FACTUAL HISTORY

On October 3, 2005 appellant, then a 51-year-old supervisory border patrol agent, filed an occupational disease claim alleging that on September 16, 2005 he first realized that his hearing loss was caused by factors of his federal employment. He explained that, throughout the course of his employment, he had been exposed to loud noises on a regular basis from gunfire, boat and aircraft engines. During a recent hearing test, an audiologist specifically asked appellant if he was often exposed to gunfire noise. He was ultimately diagnosed with severe and profound high frequency hearing loss. In accompanying statements, appellant provided a history of his exposure to noise during his military service and federal employment. He was not aware of any previous ear or hearing problems. Appellant may have been exposed to some level of noise while playing the highland bagpipes since 1998. He was still exposed to hazardous noise at work because he was required to train and qualify with a firearm. Appellant submitted the results of an audiogram performed on September 16, 2005 by Terry Rutz, an audiologist, who diagnosed profound bilateral sensorineural high frequency hearing loss. Mr. Rutz recommended hearing aids for both ears.

By letter dated November 14, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Lawrence R. Grobman, a Board-certified otolaryngologist, for a second opinion medical examination.

In a December 6, 2005 medical report, Dr. Grobman reviewed appellant's case record, the statement of accepted facts and a history of his medical background. Appellant related to him that he never used hearing aids. He also denied any further injury to his ears. On physical examination, Dr. Grobman reported normal right and left external ears. On examination, he found normal ear canals and tympanic membranes. An audiometric evaluation revealed bilateral severe high frequency sensorineural hearing loss beginning at 3,000 hertz (Hz). Discrimination and tympanograms were normal. Dr. Grobman noted that appellant had no noise exposure in the last 48 hours and the audiometer had been calibrated on June 15, 2005. He concluded that he sustained bilateral severe sensorineural hearing loss that was, due in part, to noise exposure during his federal employment. Dr. Grobman stated that there was nothing else in his history to suggest that the hearing loss was anything other than noise related. He recommended the use of hearing aids, hearing protection and an annual audiogram. A December 6, 2005 audiogram performed by Dr. Constance H. Cabeza, an audiologist, accompanied Dr. Grobman's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 15, 25 and 50, respectively and in the left ear decibel losses of 10, 15, 30 and 75, respectively.

On January 13, 2006 an Office medical adviser reviewed Dr. Grobman's December 6, 2005 report and audiogram results and agreed that appellant reached maximum medical improvement on December 6, 2005. The medical adviser diagnosed bilateral sensorineural hearing loss. Regarding the right ear, he determined that appellant had a nonratable hearing loss for schedule award purposes. Regarding the left ear, the medical adviser found that he had an 11 percent monaural hearing loss in the left ear. The medical adviser recommended that a hearing aid be authorized.

By letter dated January 17, 2006, the Office accepted appellant's claim for bilateral noise-induced hearing loss and authorized hearing aids.

On March 9, 2006 appellant filed a claim for a schedule award. He indicated that he was receiving interim monthly annuity payments pending computation of his retirement benefits by the Office of Personnel Management.

By decision dated April 10, 2006, the Office granted appellant a schedule award for an 11 percent hearing loss in the left ear, 5.72 weeks for the period December 6, 2005 to January 15, 2006.

LEGAL PRECEDENT -- ISSUES 1 & 2

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ However, neither the Act, nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz 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

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404; *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted* (modifying prior decision) Docket No. 01-1570 (issued August 13, 2002).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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 -- ISSUES 1 & 2

On appeal appellant contends that he is entitled to a schedule award for a 25 percent binaural hearing loss for both the right and left ears.

Dr. Grobman, the second opinion specialist, examined appellant and submitted a report on December 6, 2005 finding that he sustained bilateral sensorineural hearing loss related to noise exposure in the course of his federal employment. The Office medical adviser properly applied the Office's standardized procedures to the December 6, 2005 audiogram obtained by Dr. Grobman. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 15, 25 and 50, respectively for a total of 100 decibels. When divided by 4, the result is an average hearing loss of 25 decibels. The average loss of 25 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels revealed decibel losses of 10, 15, 30 and 75, respectively, for a total of 130 decibels. When divided by 4, the result is an average hearing loss of 32.5 decibels. The average loss of 32.5 decibels is reduced by 25 decibels to equal 7.5, which, when multiplied by the established factor of 1.5, results in an 11.25 percent hearing loss which is the equivalent of an 11 percent hearing loss for the left ear.¹¹ Consequently, the Office medical adviser properly determined that appellant had an 11 percent hearing loss in the left ear.

The Board finds that the Office medical adviser properly applied the Office's standards to the findings stated in Dr. Grobman's December 6, 2005 report and accompanying audiogram. This represents a nonratable hearing loss in the right ear, which is not compensable for a schedule award¹² and an 11 percent hearing loss in the left ear, for which appellant received a schedule award.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss in the right ear entitling him to a schedule award and an 11 percent hearing loss for the left ear.

⁹ *Id.*

¹⁰ See *Donald E. Stockstad*, *supra* note 4.

¹¹ The Board notes that the policy of the Office is to round the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 2 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

¹² Although appellant sustained an employment-related loss of hearing in the right ear, it was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act. *Royce L. Chute*, 36 ECAB 202 (1984).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board