

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

T.S., Appellant

and

**DEPARTMENT OF THE NAVY, PATUXENT
RIVER NAVAL AIR STATION, MD, Employer**

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**Docket No. 06-1089
Issued: September 11, 2006**

Appearances:
T.S., 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 April 4, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' schedule award decision dated March 22, 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 a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On October 6, 2005 appellant, then a 52-year-old firefighter, filed an occupational disease claim alleging that on June 25, 1986 the employing establishment's occupational health service notified him that he had a noise-induced hearing loss. He attributed his hearing loss to working around an airfield and fire house. Appellant's supervisor indicated that he was last exposed to noise on July 2, 2005. In support of his claim for hearing loss, appellant submitted a series of audiograms dating from 1986 through 2005.

The Office referred appellant for a second opinion examination with Dr. Mohammad Zafar Iqbal, a Board-certified otolaryngologist. In a December 16, 2005 report, Dr. Iqbal stated that appellant's sensorineural hearing loss was in excess of presbycusis and that his workplace exposure was sufficient to have caused the additional loss. He diagnosed bilateral high frequency sensorineural hearing loss and tinnitus.

Dr. Iqbal submitted audiological testing done on his behalf. The December 16, 2005 audiogram 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 25, 5, 10 and 50 and left ear decibel losses of 15, 10, 15 and 50, respectively. Appellant's decibel losses for the right ear were totaled at 90 and divided by 4 to obtain the average hearing loss per cycle of 22.5. The average of 22.5 was then reduced by the 25 decibel fence to equal loss for the right ear. Appellant's decibel losses for the left ear were also totaled at 90 and divided by 4 to obtain the average hearing loss per cycle of 22.5. The average of 22.5 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. Dr. Iqbal concluded that appellant's hearing loss was not ratable for schedule award purposes.

Appellant's speech discrimination scores were 88 percent on the right and 60 percent on the left. Dr. Iqbal awarded appellant five percent binaural hearing impairment due to tinnitus impacting the ability to perform the activities of daily living.

The Office accepted appellant's claim for bilateral noise-induced hearing loss and tinnitus on January 20, 2005.

The Office initially referred appellant's claim to the Office medical examiner. In a report dated January 27, 2006, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, found that appellant had no ratable impairment in either ear due to loss of hearing, but that he was entitled to five percent impairment due to the impact of tinnitus on appellant's ability to perform the tasks of daily living. He concluded that appellant had reached maximum medical improvement on December 16, 2005 and his total impairment rating was five percent for binaural hearing loss.

Appellant requested a schedule award on January 30, 2006.

In a report dated March 2, 2006, Dr. Duane J. Taylor, the Office medical adviser and a Board-certified otolaryngologist, reviewed the medical evidence in the record and found that appellant had zero percent loss of hearing in his left and right ears and a zero percent binaural loss. He noted that appellant reached maximum medical improvement on December 16, 2005, and that appellant's workplace noise exposure was sufficient in duration and intensity to have contributed to his loss of hearing. Dr. Taylor did not address any impairment due to tinnitus.

By decision dated March 22, 2006, the Office denied appellant's claim for a schedule award finding that his hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁴ 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.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

ANALYSIS

In support of his claim for an employment-related loss of hearing, appellant submitted a series of audiograms. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing. The audiograms were not certified by a physician as being accurate, and the Office does not have to review every uncertified audiogram which has not been prepared in connection with an examination by a medical specialist.⁹ The Office referred appellant for a second opinion examination by Dr. Iqbal, a Board-certified otolaryngologist. The

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* 226-51 (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁹ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

December 16, 2005 report and accompanying audiogram from Dr. Iqbal complied with the Office's standard for medical evidence in determining a loss of hearing as it included both an appropriate audiogram and a report from a Board-certified otolaryngologist confirming findings of the audiogram.¹⁰ On January 27 and March 2, 2006 the Office medical advisers reviewed the otologic and audiologic testing performed on appellant by Dr. Iqbal on December 16, 2005 and applied the Office's standardized procedures to this evaluation. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added and averaged and the "fence of 25 decibels was deducted."¹¹ The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For levels recorded in the left ear of 15, 10, 15 and 50, the above formula derives 0 percent monaural loss and for levels recorded in the right ear of 25, 5, 10 and 50, the above formula derives 0 percent monaural loss. Therefore, appellant is not entitled to a schedule award for a loss of hearing in either ear as his impairment is not yet ratable in accordance with the standards of the A.M.A., *Guides*.¹²

The initial Office medical adviser, Dr. Thompson, a Board-certified orthopedic surgeon, and Dr. Iqbal indicated that appellant had five percent impairment due to tinnitus under the A.M.A., *Guides*.¹³ The A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: "Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."¹⁴ Drs. Thompson and Iqbal estimated five percent binaural impairment due to tinnitus impacting the ability to perform the activities of daily living. As appellant's hearing loss is not ratable, however, he is not entitled to a schedule award for tinnitus.¹⁵ Therefore, although appellant's claim for hearing loss was accepted and he is entitled to medical benefits related to this loss, the extent of hearing loss is not presently ratable under the Act and he is not entitled to receive a schedule award for loss of hearing.

CONCLUSION

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

¹⁰ *George L. Cooper*, 40 ECAB 296, 303 (1988); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹¹ The A.M.A., *Guides* points out that the loss below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions.

¹² The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, the claimant may apply for an additional schedule award for any increased permanent impairment. *Paul R. Reedy*, 45 ECAB 488, 490 (1994).

¹³ A.M.A., *Guides* 246.

¹⁴ *Id.*

¹⁵ *Juan A. Trevino*, 54 ECAB 358, 360 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2006 is affirmed.

Issued: September 11, 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