

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

H.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

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**Docket No. 06-1222
Issued: September 6, 2006**

Appearances:
H.F., 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 May 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 20, 2006 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 32 percent binaural hearing loss, for which he received schedule award compensation.

FACTUAL HISTORY

This is the third appeal in the present case. In the first appeal,¹ the Board issued a decision on September 6, 2002 determining that the case was not in posture as to whether appellant had more than a 23 percent binaural hearing loss for which he received a schedule

¹ Docket No. 02-1181 (issued September 6, 2002).

award.² The Board indicated that the Office had based its February 25, 2002 schedule award on a January 17, 2002 report of an Office medical adviser who evaluated the findings of a November 23, 2001 audiogram obtained by Dr. Andrew J. Lehr, a Board-certified otolaryngologist and Office referral physician. The Board noted that the record contained other evidence which suggested that appellant had more than a 23 percent binaural hearing loss. The case was remanded to the Office for further development concerning the extent of his hearing loss. In the second appeal,³ the Board issued a decision on May 23, 2003 finding that, due to calculation errors by an Office medical adviser, it improperly determined that appellant had a 30 percent binaural hearing loss.⁴ The Board found that appellant was entitled to a schedule award for a 32 percent binaural hearing loss. The facts and the circumstances of the case are set forth in the Board's prior decisions and are incorporated herein by reference.

On September 5, 2003 the Office granted appellant a schedule award for an additional 2 percent binaural hearing loss or a total 32 percent binaural hearing loss.⁵

In December 2005, appellant claimed that he was entitled to increased schedule award compensation for his hearing loss because it had worsened due to exposure to additional noise from machines at work.⁶

In January 2006, the Office referred appellant to Dr. Donald Matheson, a Board-certified otolaryngologist, for otologic and audiologic testing.⁷ In a report dated February 13, 2006, Dr. Matheson reported his findings and concluded that appellant had an employment-related binaural hearing loss.⁸ On March 16, 2006 the Office medical adviser applied the Office's standardized procedures to this evaluation and determined that appellant had a total binaural hearing loss of 17.2 percent.

² On August 28, 2000 appellant, then a 50-year-old automation clerk, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to hazardous noise at work. The Office accepted that appellant sustained an employment-related binaural hearing loss. By decision dated February 25, 2002, the Office granted appellant a schedule award for a 23 percent binaural hearing loss.

³ Docket No. 03-711(issued May 23, 2003).

⁴ In October 2002, the Office determined that, given the large variances in the existing audiograms, it would be appropriate to refer appellant to Dr. John M. Moore, a Board-certified otolaryngologist, for additional otologic and audiologic testing and evaluation of the extent of his hearing loss. In a report detailing his November 12, 2002 evaluation of appellant's hearing, Dr. Moore indicated that appellant had a mild-to-moderate mixed bilateral hearing loss. He noted that he had calculated that appellant has a 31 percent binaural hearing loss. In reports dated January 5 and 9, 2003, an Office medical adviser determined that appellant has a 30 percent binaural hearing loss. By decision dated January 15, 2003, the Office granted appellant a schedule award for a 30 percent binaural hearing loss.

⁵ Appellant received a total of 64 weeks of compensation.

⁶ Appellant retired from the employing establishment effective May 10, 2004.

⁷ The record contains audiograms obtained by appellant in December 2005, but these were not approved by a physician as accurate and would not constitute medical evidence. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

⁸ Dr. Matheson indicated that tinnitus impacted appellant's ability to perform activities of daily living and assigned a five percent impairment rating for this condition.

By decision dated April 20, 2006, the Office determined that appellant had not shown that he had more than a 32 percent binaural hearing loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁹ and its implementing regulation¹⁰ 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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹¹

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹² 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.¹³ 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.¹⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁵ 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.¹⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁷

ANALYSIS

In 2003 the Board determined that appellant had a 32 percent binaural hearing loss. Through several schedule awards, the Office granted appellant compensation for a 32 percent binaural hearing loss. Appellant later claimed that he was entitled to increased schedule award

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404 (1999).

¹¹ *Id.*

¹² A.M.A., *Guides* at 226-51 (5th ed. 2001).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

compensation for his hearing loss because it had worsened due to exposure to additional noise at work. The Board finds that appellant had not established entitlement to additional schedule award compensation.

In March 2006, the Office medical adviser reviewed the otologic and audiologic testing performed in February 2006 by Dr. Matheson, a Board-certified otolaryngologist, and properly applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 30, 40, 35 and 35 respectively. These decibel losses were totaled at 140 decibels and were divided by 4 to obtain the average hearing loss of 35 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 10 which was multiplied by the established factor of 1.5 to compute a 15 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 40, 40, 45 and 50 respectively. These decibel losses total 175 decibels and when divided by 4 result in an average hearing loss of 43.75 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 18.75 which when multiplied by the established factor of 1.5 to equals a 28.125 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the left ear, 15 percent, is multiplied by the established factor of 5, added to the 28.125 percent loss in the right ear and this sum is divided by the established factor of 6 to calculate a 17.2 percent binaural hearing loss.

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.¹⁸ The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.¹⁹ A partial loss of hearing is compensated at a proportionate rate,²⁰ so appellant's award of compensation for a 32 percent binaural hearing loss entitled him to 32 percent of 200 weeks of compensation, or 64 weeks of compensation. The record indicates that appellant has already received this amount of compensation. Because appellant has been fully compensated for the percentage of binaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.²¹

¹⁸ 5 U.S.C. § 8107(c).

¹⁹ 5 U.S.C. § 8107(c)(13)(B).

²⁰ 5 U.S.C. § 8107(c)(19).

²¹ According to the A.M.A., *Guides*, tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination; an impairment percentage of up to five percent may be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living; see A.M.A., *Guides* 246 (5th ed. 2001). Dr. Matheson indicated that tinnitus impacted appellant's ability to perform activities of daily living and assigned a five percent impairment rating for this condition. Dr. Matheson did not provide any explanation of this finding and even if this 5 percent impairment rating were added to the 17.2 percent impairment rating for binaural hearing loss, appellant would not be entitled to any additional schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 32 percent binaural hearing loss, for which he received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 20, 2006 decision is affirmed.

Issued: September 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