

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

B.V., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, Chicago, IL,
Employer**

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**Docket No. 07-718
Issued: July 2, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2007 appellant filed a timely appeal from a November 6, 2006 merit decision of the Office of Workers' Compensation Programs granting him a schedule award for a 47 percent monaural hearing loss of the left ear. 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 that he has greater than a 47 percent hearing loss in his left ear, for which he received a schedule award.

FACTUAL HISTORY

On August 18, 1982 appellant, then a 26-year-old special agent, filed a traumatic injury claim alleging that he ruptured his left eardrum and sustained a hearing loss while participating in a work-related firearms class. On May 26, 1984 and April 20, 1992, he perforated his left eardrum in two work-related accidents. Appellant's claim was accepted for perforation of the

left tympanic membrane, a total perforation of the tympanic membrane of the left ear and air conductive hearing loss of the left ear. He underwent surgeries related to his accepted conditions on February 7 and November 22, 1988, May 19, 1992 and September 22, 1995.

On August 30, 2002 appellant requested a schedule award. The Office referred him, together with the entire medical record and a statement of accepted facts, to Dr. Charles L. Cassady, a Board-certified otolaryngologist, for an evaluation of the hearing loss related to his accepted conditions. Dr. Cassady evaluated appellant and obtained an audiogram on August 10, 2004. In a report dated August 10, 2004, he thoroughly reviewed appellant's history of injury and medical history. Examination of appellant revealed that the left tympanic membrane had a large perforation, extending from the anterior-inferior border toward the posterior part of the tympanum. The audiogram revealed a fairly normal hearing pattern in the right ear, with high frequency sensorineural-type hearing loss of 40 decibels at 4,000 cycles per second (cps). Testing of the left ear showed an air conductive hearing loss, with a significant airborne gap at all frequencies tested. Speech discrimination scores were very good bilaterally. Dr. Cassady provided a diagnosis of a perforated left tympanic membrane, with air conductive hearing loss, service incurred. He also found a mild to high frequency sensorineural-type hearing loss at 4,000 cps in the right ear.

The Office referred the case to the district medical adviser for review. In a report dated September 27, 2004, the district medical adviser concurred with Dr. Cassady's opinion that appellant's hearing loss was work related. After reviewing the August 10, 2004 audiogram report and in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition), the medical adviser found that testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 5 and 15, respectively and in the left ear decibel losses of 70, 55, 50 and 50, respectively. Appellant's decibel losses for the right ear were totaled at 45 and divided by 4 to obtain the average hearing loss per cycle of 11.25. The average of 11.25 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear. The 0 was then multiplied by 1.25, resulting in a 0 percent loss for the right ear. Accordingly, the medical adviser found that appellant had no ratable loss in the right ear. Appellant's decibel losses for the left ear were totaled at 225 and divided by 4 to obtain the average hearing loss per cycle of 56.25. The average of 56.25 was then reduced by the 25 decibel fence to equal 31.25 decibels for the left ear. The 31.25 was then multiplied by 1.5, resulting in a 46.87 percent loss for the left ear. The medical adviser found that appellant had a 7.8 percent binaural loss pursuant to Table 11-2 of the A.M.A., *Guides*. He opined that the date of maximum medical improvement was August 10, 2004 and recommended that a hearing aid should be authorized for appellant's left ear.

By decision dated October 29, 2004, the Office granted appellant a schedule award for a 7.8 percent binaural hearing loss. The award ran for 15.6 weeks from August 10 to November 27, 2004.

On November 4, 2004 appellant requested an oral hearing. On June 22, 2005 an Office hearing representative issued a decision reversing the October 10, 2004 decision and awarding compensation for a 47 percent monaural hearing loss in the left ear. The hearing representative found that the Office should not have addressed a right ear hearing loss, in that no work-related

right ear condition had been alleged or accepted by the Office. The case was returned to the district Office for an appropriate decision.

By decision dated November 6, 2006, the Office granted appellant a schedule award for a 47 percent monaural hearing loss in the left ear. The award ran for 24.44 weeks from August 10 to January 28, 2005, to be offset by the prior schedule award payment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ 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 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* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.²

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 cps, the losses at each frequency are added up and averaged.⁴ The average is then reduced by the 25 decibel fence.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

¹ 5 U.S.C. §§ 8101-8193.

² See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ A.M.A., *Guides* 250.

⁴ *Id.*

⁵ 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. See *supra* note 3.

⁶ See *supra* note 3.

⁷ *Id.*

⁸ See *David W. Farrall*, 56 ECAB _____ (Docket No. 04-2142, issued February 23, 2005). See also *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).

ANALYSIS

In a June 22, 2005 decision, the Office hearing representative correctly found that appellant should not have received an award for a binaural hearing loss, in that no work-related right ear condition had been alleged or accepted by the Office. Reversing the October 10, 2004 decision and awarding compensation for a 47 percent monaural hearing loss in the left ear, the hearing representative returned the case to the district Office for an appropriate decision.

The district medical adviser applied the correct sections of the fifth edition of the A.M.A., *Guides* and properly applied the Office's standardized procedures to the August 10, 2004 audiogram in determining the degree of permanent impairment secondary to hearing loss in appellant's left ear. Testing for the left ear revealed decibel losses of 70, 55, 50 and 50, respectively. These decibel losses were totaled at 225 and divided by four to obtain the average hearing loss per cycle of 56.25. The average of 56.25 was then reduced by the 25 decibel fence to equal 31.25 decibels for the left ear. The 31.25 was then multiplied by 1.5, resulting in a 46.87 percent loss for the left ear. In its November 6, 2006 decision, the Office properly rounded up to find a 47 percent monaural loss for the left ear.⁹

The Board finds that the district medical adviser applied the proper standards to the findings stated in Dr. Cassady's August 10, 2004 report and properly relied upon the August 10, 2004 audiogram, as it was part of Dr. Cassady's evaluation and met all the Office's standards.¹⁰ The Board further finds that the medical adviser properly found that the date of maximum medical improvement was August 10, 2004, the date of Dr. Cassady's examination.

The schedule award provision of the Act specifies the number of weeks of compensation to be awarded for loss of hearing. For total loss of hearing in one ear, the Act provides for 52 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate; therefore, a 47 percent monaural hearing loss equals 24.44 weeks of compensation.

On appeal, appellant objects to the finding that he reached maximum medical improvement, stating that his damaged left eardrum is a "continual problem requiring attention and eventually a hearing aid." The Board notes that a finding that appellant has reached maximum medical improvement does not preclude continuing medical benefits, to which he is still entitled. On September 27, 2004 the district medical adviser recommended that a hearing aid should be authorized for appellant's left ear. Appellant may submit a request to the Office for a hearing aid pursuant to section 8103 of the Act.¹¹

⁹ The Office rounds the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

¹¹ 5 U.S.C. § 8103(a).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained more than a 47 percent loss of hearing in the left ear for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2006 is affirmed.

Issued: July 2, 2007
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