

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

R.R, Appellant)
and) Docket No. 07-1660
DEPARTMENT OF LABOR, MINE SAFETY &) Issued: November 21, 2007
HEALTH ADMINISTRATION, Denver, CO,)
Employer)

)

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 May 27, 2007 appellant timely appealed the April 25, 2007 merit decision of the Office of Workers' Compensation Programs which granted a schedule award for nine percent hearing loss of the right ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than nine percent right ear hearing loss for which he received a schedule award.

FACTUAL HISTORY

On August 30, 2006 appellant, then a 59-year-old supervisory mine safety and health inspector, filed an occupational disease claim alleging that he sustained a hearing loss in the performance of duty. He submitted audiograms from December 10, 1981 through June 26, 2006.

In a November 7, 2006 letter, the Office informed appellant that he was scheduled for an appointment with Dr. Richard Cundy, an otolaryngologist, on November 28, 2006. Dr. Cundy

submitted a report detailing the examination on November 28, 2006 with an accompanying audiogram made on the same day. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear decibels 30, 30, 30 and 35; left ear decibels 25, 20, 20 and 25. Dr. Cundy opined that appellant's exposure to drills and other machines was intense enough to cause the hearing loss, especially in closed spaces. He diagnosed neurosensory hearing loss and recommended hearing aids. On December 6, 2006 the district medical adviser reviewed Dr. Cundy's report and opined that appellant had a nine percent hearing loss in the right ear.

In a December 15, 2007 decision, the Office accepted appellant's claim for noise-induced hearing loss. On January 8, 2007 appellant requested a schedule award for his hearing loss. On April 25, 2007 the Office granted a schedule award for nine percent right ear permanent impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).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

¹ The Act provides that, for complete or 100 percent loss of hearing in one ear an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

ANALYSIS

Appellant's November 28, 2006 audiogram, recorded the frequency levels at 500, 1,000, 2,000 and 3,000 hertz for the right ear, revealing decibel losses of 30, 30, 30 and 35 respectively, for a total of 135 decibels. This amount, when divided by four, results in an average hearing loss of 31.25 decibels. The average loss of 31.25 is reduced by 25 decibels to 6.25, which is then multiplied by 1.5 to total 9.375, which represents a nine percent ratable monaural hearing loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 25, 20, 20 and 25 respectively, for a total of 90 decibels. This figure when divided by four results in an average hearing loss of 22.50 decibels. The average loss of 22.50 is reduced by 25 decibels to 0, which represents a zero percent ratable monaural hearing loss for the left ear. Accordingly, appellant's most recent audiogram establishes a ratable hearing loss of nine percent for the right ear.

On appeal, appellant contends that he should be compensated for a longer period of time, contending that his award should cover a period of two years.

Under the Act, the maximum award for monaural hearing loss is 52 weeks of compensation.⁷ Since the monaural hearing loss in this case is nine percent, appellant is entitled to nine percent of 52 weeks or 4.68 weeks of compensation. His schedule award ran from November 28 through December 30, 2006, which represent to four weeks and three days. The Office properly determined the number of weeks for compensation for which appellant is entitled under the schedule award.⁸

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award for his employment-related hearing loss greater than the nine percent awarded.

⁷ 5 U.S.C. 8107(c)(13)(A).

⁸ Appellant also required generally about hearing aids. The Board's review is limited to final decisions of the Office. See 20 C.F.R. § 501.2(c). As there is no denial of any request for a hearing aid by the Office, it is not an issue on the appeal in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2007 be affirmed.

Issued: November 21, 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