

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

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D.C., Appellant )

and )

DEPARTMENT OF THE ARMY, BLUE GRASS )  
ARMY DEPOT, Richmond, KY, Employer )

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**Docket No. 07-1154**  
**Issued: September 19, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 23, 2007 appellant timely appealed the March 8, 2007 merit decision of the Office of Workers' Compensation Programs, which accepted hearing loss but determined that appellant did not have a ratable hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this schedule award claim.

**ISSUE**

The issue is whether appellant established that he sustained a ratable hearing loss in the course of his federal employment.

**FACTUAL HISTORY**

On August 16, 2006 appellant, then a 62-year-old facilities management clerk, filed an occupational disease claim alleging that he sustained a hearing loss related to his federal employment of which he first became aware on March 8, 1999.

On August 30, 2006 the Office requested additional factual information from appellant. He responded by submitting a summary of his work history and noise exposure. The Office also received employing establishment audiograms dated from July 18, 1985 through

February 15, 2006. These employing establishment audiograms documented a gradual increase in hearing loss over the years, culminating in a January 9, 2006 audiogram. The results of the January 9, 2006 audiogram determined that the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the left ear revealed decibel losses of 15, 15, 20 and 30, respectively; and for the right ear revealed decibel losses of 10, 15, 15 and 45. In a September 27, 2006 letter, the employing establishment concurred with appellant's statements regarding his work history and noise exposure.

On January 19, 2007 the Office informed appellant that he would be sent for a second opinion evaluation. On February 21, 2007 appellant was evaluated by Dr. Kevin Kavanaugh, Board-certified in otolaryngology. He opined that appellant's hearing loss was due to noise exposure in the course of his federal employment. An audiogram performed on February 21, 2007 determined that the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear revealed decibel losses of 15, 10, 10 and 40, respectively and for the left ear revealed decibel losses of 15, 10, 15 and 30.

On March 8, 2007 the Office accepted appellant's claim for hearing loss but found that appellant did not have a ratable hearing loss for purposes of schedule award compensation. The Office found that appellant was not entitled to a schedule award or additional medical benefits as applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>1</sup> to the medical evidence revealed that appellant's hearing loss was not severe enough to be ratable.

### **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.<sup>2</sup> 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>3</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>4</sup>

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.<sup>5</sup> 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

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed., 2001)

<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.404 (2006).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>5</sup> *Supra* note 1 at 250.

hear everyday speech under everyday conditions.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup>

### ANALYSIS

The February 21, 2007 audiogram of Dr. Kavanaugh revealed decibel losses at frequency levels of 500, 1,000, 2,000 and 3,000 hertz for the right ear of 15, 10, 10 and 40 respectively, or a total of 75 decibels. This total, when divided by 4, results in an average hearing loss of 18.75 decibels. The average loss of 18.75, when reduced by 25 decibels, represents a 0 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 15, 10, 15 and 30 respectively, or a total of 70 decibels. This total, when divided by 4, results in an average hearing loss of 17.50 decibels. The average loss of 17.50, when reduced by 25 decibels, represents a 0 percent ratable monaural hearing loss for the left ear. Accordingly, appellant's most recent audiogram does not establish a ratable hearing loss for either ear.

The Board notes that the January 9, 2006 employing establishment audiogram recorded the frequency levels at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 10, 15, 15 and 45 respectively, or a total of 85 decibels. This total, when divided by 4, results in an average hearing loss of 21.25 decibels. The average loss of 21.25, when reduced by 25, represents a 0 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 15, 15, 20 and 30 respectively, or a total of 80 decibels. This total, when divided by 4, results in an average hearing loss of 20 decibels. The average loss of 20, when reduced by 25 decibels, represents a 0 percent hearing loss. There is no medical evidence of record establishing that appellant has a ratable hearing loss. The Office properly determined that he was not entitled to a schedule award.

### CONCLUSION

The Board finds that appellant does not have a ratable hearing loss.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2007  
Washington, DC

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

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