

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

R.G., Appellant

and

**DEPARTMENT OF THE ARMY, MISSISSIPPI
ARMY NATIONAL GUARD, Greenwood, MS,
Employer**

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**Docket No. 08-41
Issued: April 18, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2007 appellant filed a timely appeal from a May 23, 2007 merit decision of the Office of Workers' Compensation Programs that denied his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he has a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On October 25, 2005 appellant, then a 55-year-old heavy mobile equipment mechanic, filed an occupational disease claim stating that he developed high frequency hearing loss in the performance of duty. He explained that he was exposed to noise from power and hand tools, grinders and air impact wrenches from 1975 to the present in his federal civilian employment,

and to noise from firearms and artillery firearms as well as engine noise as a member of the Army National Guard since 1970. Appellant indicated that he wore hearing protection beginning in 1985. He also noted that he engaged in moderate hunting. Appellant did not stop work. The employing establishment provided personnel data and audiograms conducted between January 30, 1986 and February 4, 2004, which showed that appellant worked for the employing establishment beginning in November 1975 and was exposed to noise from various sources.

On January 13, 2006 the Office referred appellant, along with a statement of accepted facts, to Dr. Samuel H. Lambdin, a Board-certified otolaryngologist, for a second opinion examination to determine the extent of appellant's work-related hearing loss.

In a January 26, 2006 report, Dr. Lambdin diagnosed high frequency sensorineural hearing loss and concluded that appellant's workplace exposure was sufficient to cause the loss. He explained that the degree of noise exposure in appellant's federal civilian and military experience indicated that appellant's hearing loss was noise induced. Dr. Lambdin recommended "continued noise protection." In an audiogram conducted on the doctor's behalf, the audiologist measured appellant's decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The audiogram reflected the following decibel losses: 10, 10, 20 and 50 for the right ear, and 5, 10, 15 and 35 for the left ear.

In a February 3, 2006 form report, the Office medical adviser reviewed Dr. Lambdin's otologic evaluation report. He applied the audiometric calibrations to the hearing loss computation methods outlined within the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (fifth edition) and determined that appellant had zero percent monaural hearing loss in the right ear and zero percent monaural hearing loss in the left ear. The medical adviser concluded that appellant had zero percent binaural hearing loss and no ratable impairment. He checked a box indicating that hearing aids were not authorized.

By decision dated February 7, 2006, the Office accepted appellant's claim for hearing loss. However, it concluded that his hearing loss was not sufficiently severe to be ratable and that the medical evidence did not establish that he would benefit from hearing aids.

On February 25, 2006 appellant requested an oral hearing, which was conducted on March 15, 2007. At the hearing, he testified that his treating physician had told him that he did not currently need hearing aids, but would likely need them in the future. Appellant also stated that his hearing was becoming progressively worse. The hearing representative noted that Dr. Lambdin had recommended "continued hearing protection," which she interpreted as a recommendation that the Office authorize hearing aids. She informed appellant that she would "have [the Office] update the decision to indicate that you are entitled to the hearing aids, because that's what our doctor recommended."

Following the hearing, appellant submitted a March 27, 2007 audiogram on which the physician's authenticating signature is illegible. The audiogram reflected testing at frequencies of 500, 1,000, 2,000 and 3,000 cps and reflected the following decibel losses: 5, 10, 15 and 50 for the right ear, and 10, 5, 15 and 35 for the left ear. Appellant also provided an April 13, 2007

statement, correcting certain errors in terminology in the hearing transcript and clarifying that he wore hearing protection on the job.

By decision dated May 23, 2007, the hearing representative affirmed the Office's decision finding that appellant's hearing loss was not ratable for schedule award purposes.¹

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulations³ set 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

¹ The hearing representative's decision did not address whether hearing aids were authorized.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2002).

⁴ *Id.*

⁵ A.M.A. *Guides* 250 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS

The Office medical adviser applied the Office's standard procedures, detailed above, to the January 26, 2006 audiogram performed on Dr. Lambdin's behalf. Appellant's January 26, 2006 audiogram tested decibel losses at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 10, 10, 20 and 50 respectively for the right ear. The total decibel loss in the right ear is 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 decibels is reduced by the "fence" of 25 decibels to equal 0 decibels, which when multiplied by the established factor of 1.5, results in no ratable monaural hearing loss for the right ear.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 10, 15 and 35 decibels respectively, for a total decibel loss of 65 decibels. When divided by 4, the result is an average hearing loss of 16.25 decibels. The average loss of 16.25 decibels is reduced by the "fence" of 25 decibels, to equal 0 decibels, which when multiplied by the established factor of 1.5, results in no ratable monaural hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Lambdin's January 26, 2006 report and audiogram. The result is zero percent binaural hearing loss, which is not ratable. Therefore, appellant's hearing loss is not compensable for schedule award purposes.¹¹

Following the hearing, appellant submitted a March 27, 2007 audiogram. The Board notes, however, that the signature on the audiogram is illegible and thus it is unclear whether the audiogram was properly certified as accurate by a physician. It is appellant's burden to submit a properly certified audiogram to the Office.¹² The Office is not required to review every uncertified audiogram submitted for consideration.¹³ However, even assuming *arguendo* that the March 27, 2007 audiogram was properly authenticated, it does not establish that appellant had a ratable hearing impairment entitling him to a schedule award. The March 27, 2007 audiogram reflected the following decibel losses: 5, 10, 15 and 50 for the right ear, and 10, 5, 15 and 35 for the left ear. Applying the Office's standard procedures as noted above yields zero percent monaural hearing impairment for the right ear and zero percent monaural hearing impairment for the left ear. Accordingly, appellant's hearing impairment is not ratable for schedule award purposes under the March 27, 2007 audiogram.

¹¹ The Board notes that, on appeal, appellant indicated that he was told to expect a letter stating that he was eligible for hearing aids and had not, to date, received any such correspondence. The Board notes that the hearing representative did not address appellant's entitlement to hearing aids in her decision, and thus the Board does not have jurisdiction over the issue. See 20 C.F.R. § 501.2(c). The Board also notes that the record does not reflect that the second opinion examiner, Dr. Lambdin, recommended hearing aids, but rather "continued noise protection," and that the Office medical adviser indicated that hearing aids were not authorized.

¹² *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

¹³ *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he had a ratable hearing loss entitling him to a schedule award for permanent partial impairment of his binaural hearing.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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