



Veterans Affairs (DVA) for his hearing loss and was awarded \$110.00 per month for a 10 percent military-related impairment.

On January 27, 2006 the Office referred appellant for a second opinion examination with Dr. James Fordice, a Board-certified otolaryngologist, who found that appellant's hearing loss was in excess of what would be predicted by presbycusis but that not all of it was caused by his federal employment. He stated that appellant's employment exposure was sufficient to cause the hearing loss found in the right ear and an equivalent amount in his left ear. Dr. Fordice opined, however, that appellant's profound left ear loss could not have been caused by his federal employment. He diagnosed bilateral sensorineural hearing loss. The audiometric test results for 500, 1,000, 2,000 and 3,000 cycles per second (cps) showed hearing losses of 10, 20, 15 and 20 decibels, respectively, for the right ear and losses of 40, 115, 115 and 115 decibels, respectively, for the left ear.

On February 27, 2006 an Office medical adviser noted that, based on Dr. Fordice's findings, appellant had no ratable hearing loss in his right ear and 100 percent hearing loss in his left ear. However, the medical adviser found that appellant was not entitled to a schedule award since the portion of his bilateral hearing loss attributable to his federal employment, based on the right ear loss, was unratable.

By decision dated March 1, 2006, the Office accepted appellant's claim for noise-induced bilateral hearing loss. In a separate decision on the same date, the Office notified him that he was not entitled to a schedule award because his employment-related hearing loss was not severe enough to be ratable. On March 7, 2006 appellant requested an oral hearing.

By decision dated December 18, 2006, the Office hearing representative found that the case was not in posture and set aside the March 1, 2006 decision. He found that the record established that appellant was entitled to a schedule award for 100 percent hearing loss in the left ear. The Office hearing representative noted that the Office was required to pay a schedule award for the entire left ear hearing loss if any portion of the loss was work related. He also noted that appellant had already received some benefits from the DVA related to his left ear hearing loss. The Office hearing representative stated that, on remand, the Office should determine whether appellant was receiving dual benefits from the DVA and the Office.

On January 19, 2007 the Office notified appellant that he would have to make an irrevocable election between schedule award benefits from the Office and disability payments from the DVA, as both were connected to the left ear hearing loss he experienced during his federal civilian employment. The Office stated that appellant would be entitled to a schedule award of 52 weeks of compensation if he elected to receive benefits from the Office, but that he would have to repay the benefits already paid by the DVA.

On February 6, 2007 appellant elected to accept benefits from the Office. On February 17, 2007 at the request of the Office he completed a claim for compensation requesting a schedule award.

On March 20, 2007 the Office submitted appellant's medical records to Dr. Augustus Anderson, an Office medical adviser, for an opinion on appellant's entitlement to a schedule

award. Dr. Anderson noted that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed., 2001), page 247, indicated that, if hearing loss is greater than 100 decibels at any level, it should be listed as 100 when making calculations related to hearing loss. Using the method prescribed by the A.M.A., *Guides*, he found that appellant had no ratable hearing loss in his right hear and 90 percent hearing loss in his left ear.

By decision dated April 4, 2007, the Office granted a schedule award for 46.8 weeks of compensation based on 90 percent left ear hearing loss and 0 percent right ear hearing loss. It found that Dr. Anderson's opinion carried the weight of the medical evidence because, unlike the first Office medical adviser, he took into account appellant's preexisting hearing loss and properly utilized the A.M.A., *Guides*.

On April 15, 2007 appellant requested a review of the written record. He stated that he relied on the Office's erroneous statement that he was entitled to 52 weeks of compensation when he made his irrevocable election. Appellant also stated that the Office's physicians had not adequately addressed his tinnitus.

By decision dated July 23, 2007, an Office hearing representative affirmed the April 4, 2007 decision. He found that Dr. Anderson, the Office medical adviser, had properly applied the A.M.A., *Guides* to find that appellant had 90 percent hearing impairment in his left ear. The Office hearing representative also found that the Office had properly calculated appellant's schedule award amount.<sup>1</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations 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.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss is to 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.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>5</sup> Then, the fence of 25 decibels is deducted because,

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<sup>1</sup> The Office did not make any final decision on the arguments appellant raised in his request for review of the record. Therefore, the Board has no jurisdiction to address either of them.

<sup>2</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.404.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> A.M.A., *Guides* 226-51 (5<sup>th</sup> ed. 2001).

<sup>5</sup> *Id.*

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.<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> 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.<sup>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

### ANALYSIS

The Office referred appellant to Dr. Fordice, a Board-certified otolaryngologist, for a second opinion on the cause of his hearing loss. After receiving Dr. Fordice's report, which found that portions of appellant's hearing loss were employment related, the Office referred appellant's record to an Office medical adviser for an opinion and application of the Office's protocols for computing the percentage of hearing loss. The Office medical adviser improperly applied the A.M.A., *Guides* to find that appellant had 100 percent hearing loss in his left ear. He also opined that appellant should not receive a schedule award because the portion of his hearing loss related to his federal employment was not ratable. Based on this opinion, the Office found that appellant was not entitled to a schedule award. The Office hearing representative reversed the Office's decision and remanded the case to determine whether a schedule award should be issued.

Following the remand of appellant's case by the Office hearing representative, the Office properly referred the medical record to Dr. Anderson, a second Office medical adviser. He reviewed Dr. Fordice's report and properly utilized the A.M.A., *Guides* to determine appellant's compensable hearing loss. Dr. Anderson added the right ear decibel losses recorded at 500, 1,000, 2,000 and 3,000 cps, which were 10, 20, 15 and 20 decibels, respectively, for a total of 65 decibels. When divided by four, the result is an average hearing loss of 16.25 decibels. The average loss was then reduced by the "fence" of 25 decibels to equal zero, which, when multiplied by the established factor of 1.5 results in a zero percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed levels of 40, 115, 115 and 115 decibels, respectively, Dr. Anderson correctly noted that the A.M.A., *Guides*, page 427, states that all results above 100 should be recorded as 100 when utilizing the monaural hearing loss formula. Therefore, he correctly found a total loss of 340 decibels. When divided by 4, the result is an average hearing loss of 85 decibels. The average loss was reduced by the "fence" of 25 decibels to equal 60, which when multiplied by the established factor of 1.5 results in a 90 percent monaural loss for the left ear. The evidence of record establishes that appellant has no ratable hearing loss in the right ear and a 90 percent loss

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

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

<sup>8</sup> *Id.*

<sup>9</sup> *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

in the left ear. The Board finds that the Office properly determined appellant's entitlement to a schedule award.<sup>10</sup>

As appellant submitted no additional medical evidence to establish that he has a hearing loss of greater than 90 percent in his left ear, the Board finds that he has not met his burden of proof for an increased schedule award.

### **CONCLUSION**

The Board finds that appellant has a 90 percent hearing loss in his left ear and a nonratable hearing loss to his right ear.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 23 and April 4, 2007 are affirmed.

Issued: February 20, 2008  
Washington, DC

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

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

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

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<sup>10</sup> The Office issued an award for 46.8 weeks of compensation based on the 90 percent monaural loss. For a total loss of the hearing, the Act provides a maximum of 52 weeks of compensation. *See* 5 U.S.C. § 8107(c)(A). Appellant received the appropriate amount of 46.8 weeks of compensation, or 90 percent of 52 weeks.