

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

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**T.W., Appellant** )

**and** )

**DEPARTMENT OF THE ARMY, U.S. ARMY )  
CORPS OF ENGINEERS, J. STROM )  
THURMONS POWER PLANT, Clarks Hill, SC, )  
Employer** )

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**Docket No. 09-77  
Issued: February 4, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On October 10, 2008 appellant timely appealed the August 28, 2008 decision of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

**ISSUE**

The issue is whether appellant established a ratable hearing loss causally related to his federal employment.

**FACTUAL HISTORY**

On May 29, 2008 appellant, a 61-year-old power plant electrician, filed an occupational disease claim for hearing loss. He alleged that he became aware of his hearing loss on October 24, 2007. Appellant explained that he was exposed to noise from a variety of sources, including motors which operate various pumps at the power plant.

In support of his claim, appellant submitted the results of five audiograms, conducted between 1997 and 2005.

On July 28, 2008 the Office referred appellant to Dr. Thomas Crews, a Board-certified otolaryngologist, for a second opinion to determine the cause and extent of his claimed hearing loss. In his August 15, 2008 report, Dr. Crews noted appellant's workplace exposure was sufficient to have caused the loss in question. An audiogram reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels showed the following decibel losses: 5, 10, 40 and 35 in the right ear and 5, 10, 20 and 35 in the left ear. Dr. Crews concluded that the examination showed mild symmetrical mid-range and high-frequency sensorineural hearing loss secondary to exposure he encountered in the performance of duty.

On August 25, 2008 the Office medical adviser reviewed Dr. Crews' August 15, 2008 report and concluded that appellant had bilateral sensorineural hearing loss but that it was not ratable for purposes of a schedule award.

By decision dated August 28, 2008, the Office accepted appellant's claim for bilateral sensorineural hearing loss but found that, based upon the April 15, 2008 audiogram and the medical opinion of a licensed otolaryngologist, appellant's hearing loss was not severe enough to be ratable. As such, appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.

### **LEGAL PRECEDENT**

Section 8107 of the 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>1</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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</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>4</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 hear

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<sup>1</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>2</sup> 20 C.F.R. § 10.404 (2006).

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

<sup>4</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

everyday speech under everyday conditions.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>7</sup>

### ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the August 15, 2008 audiogram obtained by Dr. Crews. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses in the right ear of 5, 10, 40 and 35 respectively. These totaled 90 decibels which, when divided by 4, obtained an average hearing loss of 22.5 decibels. The average of 22.5 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 decibels which, when multiplied by the established factor of 1.5, produces a 0 percent hearing loss in the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses in the left ear of 5, 10, 20 and 35 respectively. These totaled 70 decibels which, when divided by 4, obtains an average hearing loss of 17.5. The average of 17.5 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels which, when multiplied by the established factor of 1.5, produces a 0 percent hearing loss in the left ear.

While the evidence of record establishes that appellant has mild sensorineural hearing loss causally related to his federal employment, Dr. Crews' opinion establishes that review of these audiograms showed that the hearing threshold were still within the confines of normal hearing. Therefore, the Office properly denied the claim for compensation based upon the medical evidence in the record.

### CONCLUSION

The weight of the medical evidence does not establish a ratable hearing loss causally related to noise exposure in federal employment.<sup>8</sup>

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

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

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

<sup>8</sup> On appeal appellant has informed the Board that he has received hearing aids which were paid for by the Office. The Office has however by telephone conference advised appellant that the hearing aids will not be serviced, upgraded or replaced. At the present time any future maintenance request is speculative and interlocutory and not before the Board at the present time.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 28, 2008 is affirmed.

Issued: February 4, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board