

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

N.B., Appellant)

and)

DEPARTMENT OF THE ARMY, CORPUS)
CHRISTI ARMY DEPOT, Corpus Christi, TX,)
Employer)

Docket No. 09-108
Issued: February 24, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal of a September 29, 2008 merit decision wherein the Office of Workers' Compensation Programs issued a schedule award for a 10 percent binaural loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award.

ISSUE

The issue is whether appellant has more than a 10 percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On January 25, 2008 appellant, then a 61-year-old electroplater leader, filed an occupational disease claim alleging that he suffered from continuous ringing in his left ear and partial damage to his right ear as a result of exposure to noise while cleaning and restoring engine parts on the UH-1 Huey helicopter, turbine engines and transmissions parts.

On May 23, 2008 the Office referred appellant to Dr. Paul W. Loeffler, a Board-certified otolaryngologist, for a second opinion. In a medical report dated June 12, 2008, Dr. Loeffler assessed appellant with tinnitus and bilateral sensorineural hearing loss due to noise exposure during his federal employment. He recommended hearing aids. An audiogram was conducted on behalf of Dr. Loeffler and he interpreted the test as reflecting testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) that revealed decibel losses on the right (air) as 15, 15, 30 and 50, respectively. He then added the losses at each frequency and averaged the losses to determine that appellant had an average hearing loss of 27.5 decibels in his right ear. Dr. Loeffler then subtracted the fence of 25 decibels and multiplied the remaining amount by a factor of 1.5 to arrive at a 3.75 percent monaural impairment in the right ear. With regard to the left ear, he found that testing at 500, 1,000, 2,000 and 3,000 cps revealed a hearing loss on the left (air) as 15, 10, 45 and 55, respectively. Dr. Loeffler determined that the average hearing loss was 31.25 decibels, subtracted the fence of 25 decibels to equal 6.25 and multiplied this figure by 1.5 to determine that appellant had a 9.375 decibel hearing loss to his left ear. He calculated appellant's binaural hearing impairment by multiplying 9.375 by 5 and adding 3.75 (hearing loss in the right ear) and dividing the sum by 6 to determine that appellant had an 8.437 binaural hearing loss. Dr. Loeffler then added 5 percent for the impact of tinnitus and determined that appellant had a 13.44 percent binaural hearing impairment.

By letter dated June 17, 2008, the Office asked the Office medical adviser to determine the percentage of impairment. The Office medical adviser determined that, based on the report of Dr. Loeffler, appellant had 4.7 percent impairment due to binaural hearing loss and 5 percent impairment for tinnitus which yielded a total of 9.7 percent for hearing loss and tinnitus.

On September 5, 2008 the Office accepted appellant's claim for binaural hearing loss and binaural tinnitus. It further authorized hearing aids.

On September 10, 2008 appellant filed a claim for a schedule award.

By decision dated September 29, 2008, the Office issued a schedule award for 10 percent binaural hearing loss.

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

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).

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 cps, 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 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.⁷

ANALYSIS

Based on the report of the second opinion specialist, Dr. Loeffler, the Office medical examiner determined that appellant had a 9.7 percent hearing impairment. The Office rounded this figure up and issued a schedule award based on a 10 percent binaural hearing impairment. In reviewing Dr. Loeffler's June 12, 2008 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear revealed decibel losses of 15, 15, 30 and 50, respectively, for a total of 110 decibels. The average loss of 27.5 is reduced by 25 decibels to 2.5, which is multiplied by 1.5 and represents a 3.75 percent ratable monaural hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 45 and 55, respectively, for a total of 125 decibels. Utilizing the above-noted formula, results in a 9.375 decibel hearing loss to appellant's left ear. When the hearing loss in the better ear of 3.25 percent decibel loss is multiplied by 5 and added to the hearing loss in appellant's most impaired ear of 9.375, this yields a sum of 25.625, which divided by 6, indicates that appellant has 4.27 impairment due to hearing loss. When added to the five percent for tinnitus,⁸ this results in a total binaural impairment of 9.27 percent. The Board notes that the Office medical adviser based his conclusion on the audiogram conducted on behalf of Dr. Loeffler. However, Dr. Loeffler did not properly calculate appellant's binaural hearing loss in performing his calculations for binaural hearing loss based upon his correct calculations for impairment in each ear, he mistakenly switched the ear with the greatest impairment with the ear with the lesser impairment in the formula calculating binaural hearing loss. When the

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 2.0808.7(b)(2) (April 1995).

⁴ A.M.A., *Guides* 246 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, the A.M.A., *Guides* allow up to five percent additional for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living. A.M.A., *Guides* 246.

appropriate figures are inserted into the formula, appellant has 4.27 percent impairment due to hearing loss, not 8.437 impairment, as found by Dr. Loeffler. Accordingly, as the Office determined that appellant had a 10 percent binaural hearing impairment, and the record contains no opinion that correctly applies the A.M.A., *Guides* and finds that appellant is entitled to a greater amount, the Office properly found that appellant had no more than a 10 percent binaural hearing impairment.⁹

CONCLUSION

The Board finds that appellant has not established that he has more than a 10 percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2008 is affirmed.

Issued: February 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁹ With respect to appellant's contention that he should be compensated for pain and suffering, the Board notes that the Act makes no provision for payment for disability of compensation for pain or suffering, as such. *See Joseph D. Cecil*, 32 ECAB 1918 (1981).