

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

E.C., Appellant)

and)

DEPARTMENT OF THE ARMY, AIR)
NATIONAL GUARD, Jefferson City, MO,)
Employer)

**Docket No. 08-2289
Issued: May 8, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing loss decision dated May 14, 2008. Under 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 has more than a 51 percent binaural hearing loss, for which he has already received a schedule award.

FACTUAL HISTORY

On April 26, 2007 appellant, a 60-year-old supervisory aircraft pilot, filed a claim for benefits, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. A statement of accepted facts dated August 10, 2007 indicated that appellant had been exposed to hazardous noise while working for the employing establishment as a pilot who accumulated more than 10,000 flight hours.

In an audiologic and otologic evaluation dated September 19, 2007, Dr. Michael J. Simmons, a specialist in otolaryngology, noted findings on audiological evaluation based on a September 19, 2007 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear 30, 45, 75 and 95 decibels: left ear -35, 55, 70 and 75 decibels. Based on these findings, Dr. Simmons concluded that appellant had a binaural hearing loss of 51 percent.

In a memorandum dated September 26, 2007, an Office medical adviser, relying on Dr. Biteman's audiogram results and calculations, determined that appellant had a 51 percent permanent, binaural hearing loss.

On May 14, 2008 the Office granted appellant a schedule award for a 51 percent binaural hearing loss for the period September 19, 2007 to September 1, 2008, for a total of 10 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employee's Compensation Act¹ and the implementing federal regulations² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is reduced since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁶ Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. 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 binaural hearing loss.⁷

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.304.

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁶ A.M.A., *Guides* 250 (5th ed. 2001).

⁷ *Id.* See also *Danniel C. Goings*, *supra* note 3.

ANALYSIS

The Board finds that appellant is entitled to no greater than a 51 percent bilateral award hearing, for which he has already received an award. With regard to the right ear, Dr. Simmons' September 19, 2008 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the following thresholds were reported for the right ear: 30, 45, 75 and 95 decibels. These decibels, totaled to 245 and divided by 4, obtained an average hearing loss at those cycles of 61.25 decibels. The average of 61.25 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 36.5 decibels, which when multiplied by the established factor of 1.5 computes a 54.375 percent hearing loss in the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 30, 40, 30 and 40 respectively. These decibels amounted to 235, which, when divided by 4, obtains an average hearing loss at those cycles of 58.75 decibels. The average of 58.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 33.75 decibels, which when multiplied by the established factor of 1.5 amounts to a 50.625 percent hearing loss in the left ear. The Office medical adviser, relying on these audiogram results and calculations, combined the hearing loss in the right and left ears, divided the amount by two, then rounded this figure off to the nearest percentage. Based on these calculations, he properly determined that appellant had a 51 percent binaural hearing loss, for which the Office awarded him a schedule award on May 14, 2008.

The Board notes that the Office medical adviser properly applied the applicable standards of the A.M.A., *Guides*, to determine that appellant was entitled to a 51 percent binaural award. The Board affirms this award, as there was no other probative evidence in the record establishing that he sustained any greater impairment.⁸

CONCLUSION

The Board finds that appellant has no more than a 51 percent binaural hearing loss.

⁸ The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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