

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

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**R.F., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
HOMESTEAD AIR FORCE BASE, FL,  
Employer**

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**Docket No. 09-2051  
Issued: April 23, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 10, 2009 appellant filed a timely appeal of a July 29, 2009 decision of the Office of Workers' Compensation Programs which affirmed that appellant had a 29 percent binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than 29 percent binaural (both ears) hearing loss for which he received a schedule award.

On appeal, appellant contends that the hearing test used to determine his hearing loss was flawed and the audiologist biased. He contends that the audiogram he submitted on reconsideration be used to determine his hearing loss. Appellant asks the Board to either accept his recent hearing test and modify the award or have the Office schedule him for an unbiased test.

## **FACTUAL HISTORY**

On February 5, 2008 appellant, then a 55-year-old air commander, filed an occupational disease claim alleging that he sustained a hearing loss as a result of working in an inherently loud environment as a pilot and aircraft maintenance officer throughout his civilian and military career. He noticed an increase in loss of hearing in the audible range since August 2007. Appellant submitted copies of his annual audiograms. He also submitted a copy of a September 12, 2007 report from an audiologist who advised that an audiogram conducted on August 30, 2007 showed a hearing loss due to occupational noise exposure and more than would be expected for appellant's age. The audiologist recommended hearing aides.<sup>1</sup>

By letter dated April 29, 2008, the Office referred appellant to Dr. John A. Hughes-Papsidero, a Board-certified otolaryngologist, for a second opinion. In a May 12, 2008 note, appellant indicated that, when he got to the audiometric examination, which was 100 miles from his home, he was told to come back in two hours for the hearing examination. When he returned, he was informed that they were going to have the hearing test performed somewhere closer to his home.

On May 29, 2008 appellant was referred to have hearing testing performed by Cindy Simon, an audiologist. Audiometric testing performed by Ms. Simon on May 29, 2008 revealed, at frequency levels 500, 1,000, 2,000 and 3,000 cps, left ear decibel losses of 25, 40, 50 and 60 and right ear decibel losses of 20, 45, 50 and 75 percent. This audiogram was certified by Dr. Papsidero on June 5, 2008. In a June 2, 2008 report, Dr. Hughes-Papsidero diagnosed bilateral sensorineural hearing loss due to noise exposure as a federal employee. He recommended hearing aide amplification and continued noise protection.

In a June 20, 2008 report, an Office medical adviser applied the Office's standards to calculate appellant's hearing loss. He added the decibel losses in the left ear for the frequency levels of 500, 1,000, 2,000, 3,000 cps of 25, 40, 50 and 60 to total 175 decibels, which divided by 4, obtains an average hearing loss of 43.75 decibels. This average was then reduced by the 25 decibel fence to equal 18.75 decibels and multiplied by the established factor of 1.5 to total 28.125 percent hearing loss in the left ear. The Office medical adviser added the losses in the right ear of 20, 45, 50 and 75 to total 190 decibels which divided by 4, obtains an average hearing loss of 47.5 decibels. This average was then reduced by the 25 decibel fence to equal 22.5 decibels and multiplied by the established factor of 1.5 to compute 33.75 percent in the right ear. The Office medical adviser then computed a 29 percent binaural hearing loss by multiplying the lesser loss (28.125) by 5, this added to the greater loss (33.75) and the total was then divided by six.

On July 25, 2008 the Office accepted appellant's claim for bilateral hearing loss.

On July 27, 2008 appellant filed a claim for a schedule award. In a letter dated July 27, 2008, he stated that he had issues with the way Ms. Simon administered the hearing test.

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<sup>1</sup> In the August 30, 2007 audiogram, the audiologist noted that, at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps), appellant showed decibel losses in her left ear of 15, 40, 50 and 50 and in the right ear of 15, 45, 50 and 50.

Appellant stated that he was able to tell from Ms. Simon's movements that he was not responding to the tones. He alleged that Ms. Simon told him after the test that she knew appellant had ringing in the ears and that she purposely hit the tone multiple times to help him distinguish the tone over the ringing. Appellant contended that this audiogram differed from that of the audiologist to whom he was referred by his employer. That evaluation found 49 percent in one ear and 56 percent in the other.

In a decision dated December 16, 2008, the Office granted appellant a schedule award for a 29 percent bilateral hearing loss or 58 weeks for the period May 29, 2008 to July 8, 2009.

By letter dated June 29, 2009, appellant requested reconsideration. He reiterated that the May 29, 2008 hearing test was flawed. Appellant noted that he had a more accurate evaluation obtained on June 18, 2009. He submitted the results of an audiogram taken on June 18, 2009 by South Florida Associates.

By decision dated July 29, 2009, the Office denied modification of its December 16, 2008 decision.

### **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.<sup>2</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>3</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<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, 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

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<sup>2</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).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

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

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

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

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>8</sup>

### ANALYSIS

On June 2, 2008 Dr. Hughes-Papsidero reported that appellant had binaural sensorineural hearing loss due to exposure to noise during the course of his federal employment. The Office medical adviser properly applied the Office's standardized procedures to the May 29, 2008 audiogram performed by Ms. Simon for Dr. Hughes-Papsidero. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed a hearing loss in the left ear of 25, 40, 50 and 60 decibels respectively. These totaled 175 decibels which, when divided by 4, obtained an average hearing loss of 43.75 decibels. The average of 43.75 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 18.75 decibels, which, when multiplied by the established factor of 1.5 produces a 28.125 percent loss in the left ear. He properly determined the loss in the right ear by totaling 20, 45, 50 and 75 for a total of 190 and divided by 4 to obtain an average hearing loss of 47.5 decibels. This average was then reduced by 25 decibels to equal 22.5 and multiplied by the established factor of 1.5 to compute 33.75 percent in the right ear. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss, in this case 28.125 is multiplied by five, equaling 140.625 then added to the greater loss of 33.75 for a sum of 174.375 and the total is divided by six to arrive at the amount of bilateral hearing loss of 29.0625 which is rounded to 29 percent.

There is not opinion from a physician to establish that appellant sustained tinnitus which impacts his activities of daily living. Therefore, tinnitus was not a factor considered in calculating appellant's schedule award. Appellant submitted a June 18, 2009 audiogram on reconsideration, contending that he sustained greater impairment. The audiogram, however, was not reviewed by any physician as accurate. The Board has held that the Office is not obligated to review uncertified audiograms.<sup>9</sup>

Appellant also alleged bias in the audiometric testing performed by Ms. Simon on May 29, 2008. He provided no evidence, however, to support his allegations.<sup>10</sup>

### CONCLUSION

The Board finds that appellant has not established that he had more than a 29 percent binaural hearing loss for which he received a schedule award.

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

<sup>9</sup> *See Robert E. Collison*, 55 ECAB 570 (2004).

<sup>10</sup> *See J.C.*, 60 ECAB \_\_\_\_ (Docket No. 08-1833, issued March 23, 2009). There must be evidence of record of actual bias or unfairness on the part of the physician or medical specialist challenged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 29, 2009 is affirmed.

Issued: April 23, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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