

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

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**K.M., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
Chattanooga, TN, Employer**

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**Docket No. 09-2058  
Issued: May 17, 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 from the July 29, 2009 decision of the Office of Workers' Compensation Programs, which found that his hearing loss was not ratable. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the issues.

**ISSUE**

The issue is whether appellant sustained a ratable hearing loss.

**FACTUAL HISTORY**

On April 24, 2009 appellant, then a 61-year-old senior safety manager, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to hazardous noise at work. He realized the loss was due to his federal employment on April 1, 2009. Appellant did not stop work. He retired on May 8, 2009. The employing establishment submitted a job description and employment history together with copies of audiometric testing from 1989.

In a May 13, 2009 statement, Whitney R. Mauldin, a Board-certified audiologist at the employing establishment, controverted the claim. She contended that appellant's exposure to noise would have been limited to visits and not long term.

On June 8, 2009 the Office referred appellant to Dr. J. Nicholas Van Demoer, a Board-certified otolaryngologist, for otologic examination and audiological evaluation.

On June 30, 2009 Dr. Van Demoer reviewed appellant's history of injury and treatment, and performed an otologic evaluation. Audiometric testing obtained that day at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 10, 20, 5 and 10 decibels; left ear 10, 20, 5 and 10 decibels. Dr. Van Demoer determined that appellant sustained bilateral sensorineural hearing loss and probable noise-induced bilateral hearing loss. He found that the sensorineural hearing loss was due to noise exposure in the federal employment. Dr. Van Demoer attached a copy of a June 30, 2009 audiogram and a certificate of acoustic impedance/admittance meter calibration.

On July 17, 2009 an Office medical adviser reviewed the medical evidence and audiometric test to determine if appellant's bilateral sensorineural hearing loss was ratable for schedule award purposes. The Office medical adviser concluded that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*), appellant had no ratable impairment due to his accepted hearing loss. The medical adviser concurred with Dr. Van Demoer that appellant's hearing loss was not severe enough to be ratable for schedule award purposes after applying the Office's standards for evaluating hearing loss to the June 30, 2009 audiogram.

In a July 17, 2009 decision, the Office accepted appellant's claim for bilateral noise-induced hearing loss.

In a July 29, 2009 decision, the Office denied appellant's claim for a schedule award finding that his hearing loss was not ratable.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act and its implementing federal regulations<sup>1</sup> 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. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup> As of May 1, 2009, the sixth edition will be used.<sup>3</sup>

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<sup>1</sup> 20 C.F.R. § 10.404.

<sup>2</sup> *Id.* at § 10.404(a).

<sup>3</sup> FECA Bulletin No. 09-03 (issued March 15, 2008).

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, 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 Board finds that appellant's hearing loss is not ratable for schedule award purposes.

The Board notes that Dr. Van Demoer's June 30, 2009 otologic evaluation and audiologic testing revealed decibel losses of 10, 20 5 and 10 for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps.<sup>10</sup> The Board notes that the losses were the same for the left ear. The Office medical adviser calculated that the losses totaled 45 decibels for each ear, which, when divided by 4, represented an average hearing loss of 11.25 decibels. This average loss was reduced by 25 decibels (25 decibels being discounted) to equal 0. The Board notes that when multiplied by 1.5 a zero percent monaural loss is obtained for both ears. As there was a zero percent loss to both ears, there is not ratable binaural hearing loss. The medical evidence does not establish a ratable hearing loss for schedule award purposes.

On appeal, appellant disagreed with the denial of his schedule award claim and contended that the Office did not indicate the category under the A.M.A., *Guides* by which his hearing loss was rated. As noted, the Office applied its standard formula for rating hearing loss to the audiometric findings that were obtained for Dr. Van Demoer. Using this standardized formula, the extent of loss to appellant's hearing is not ratable for schedule award purposes.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a ratable hearing loss.

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<sup>4</sup> A.M.A., *Guides* at 248-54.

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

<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).

<sup>10</sup> *Id.*

**ORDER**

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

Issued: May 17, 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