

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

C.T., Appellant)

and)

DEPARTMENT OF THE ARMY, ARMY)
NATIONAL GUARD, Grand Ledge, MI,)
Employer)

**Docket No. 10-696
Issued: October 18, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant filed a timely appeal from an October 20, 2009 merit decision of the Office of Workers' Compensation Programs. Under 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 a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On February 19, 2009 appellant, a 58-year-old retired aircraft mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained a hearing loss caused by working around aircraft from 1970 to 2009. He submitted audiograms from 1986, 2000 and 2007.

In a statement of accepted facts dated March 10, 2009, the Office found that appellant was employed as an aircraft mechanic since 1981 until retiring on February 27, 2009. Appellant worked approximately 50 percent of the time in noisy areas in his position as an aircraft mechanic, which required him to work inside the hangar on helicopters and outside the hangar on running aircraft which were primarily helicopters. He was also exposed to machinery noise from compressors, hydraulic pumps and aviation ground power units.

The Office referred appellant to Dr. Leonard Dias, a Board-certified otolaryngologist, for a second opinion evaluation of his hearing loss. In a March 30, 2009 report, Dr. Dias discussed the results of a March 23, 2009 audiogram, which revealed bilateral moderate sensorineural hearing loss. It recorded hearing levels of 5, 10, 15 and 30 decibels on the right and 0, 10, 15 and 40 decibels on the left at 500, 1000, 2000 and 3000 hertz (Hz) respectively. Dr. Dias opined that the results of the audiogram suggested a noise-induced hearing loss.

In a June 19, 2009 report, an Office medical adviser reviewed the results of the March 23, 2009 audiogram, and found that appellant's bilateral hearing loss was not ratable for schedule award purposes.

By decision dated June 26, 2009, the Office accepted appellant's claim for bilateral sensorineural hearing loss but found that appellant was not entitled to a schedule award for his hearing loss. The Office noted that the results of audiometric testing under the applicable standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) revealed a nonratable hearing loss.

On July 14, 2009 appellant requested a review of the written record. He submitted audiograms dated 1986 to 2001 which showed varying degrees of bilateral hearing loss. The employing establishment provided results of audiograms from 2007 and 2008 which indicated that appellant had bilateral hearing loss.

By decision dated October 20, 2009, an Office hearing representative affirmed the June 26, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

³ *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the fence of 25 decibels is deducted. 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, then added to the greater loss, and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Board finds that the evidence of record does not establish that appellant sustained a ratable hearing loss.

The Office medical adviser properly applied the Office's standardized procedures to the May 23, 2009 audiogram obtained by Dr. Dias. The May 23, 2009 audiogram certified by Dr. Dias does not establish a ratable hearing loss. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 5, 10, 15 and 30. These totaled 60 decibels which, when divided by 4, produced an average hearing loss of 15 decibels. The average of 15 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 and which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in appellant's right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the left ear of 0, 10, 15 and 40. These totaled 65 decibels which when divided by 4, produced an average hearing loss of 16.25 decibels. The average hearing loss of 16.25 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in appellant's left ear.

On appeal, appellant contends that he is entitled to a schedule award because he sustained a measurable hearing loss. The Office accepted that appellant sustained bilateral hearing loss due to noise exposure from his federal employment. The issue is whether he sustained any ratable impairment in accordance with the A.M.A., *Guides*. The Office medical adviser properly computed the percentage of appellant's hearing loss based on the formula contained in the

⁴ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.0700.4.b (January 2010).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

A.M.A., *Guides*. There is no provision for granting a schedule award in the absence of a ratable hearing loss after deducting the 25 decibel fence.

The Board finds that the Office properly applied the audiometric test of March 23, 2009 for determining appellant's impairment and eligibility for a schedule award. It was the only test of record performed within the past two years that was certified by a physician.⁹ It is appellant's burden to submit a properly certified audiogram for review if he objects to the audiogram selected by the Office for determining the degree of hearing loss.¹⁰ Although appellant submitted results from audiometric testing performed from 1986 to 2001, these audiograms are insufficient to satisfy appellant's burden of proof as they did not comply with the requirements set forth by the Office. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by the Act. The Office is not required to rely on this evidence in determining the extent of appellant's hearing loss because it does not constitute competent medical evidence and therefore is insufficient to satisfy appellant's burden of proof.

As appellant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus. His claim for hearing loss was accepted and he is entitled to medical benefits related to this loss. Appellant's hearing loss is not ratable under the Act and the Office denied a schedule award on this basis.

CONCLUSION

The Board finds that appellant has not established a ratable hearing loss entitling him to a schedule award.

⁹ See *H.S.*, 58 ECAB 690 (2007); *John C. Messick*, 25 ECAB 333 (1974).

¹⁰ See *Joshua A. Holmes*, 42 ECAB 231 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 20 and June 26, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 18, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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