

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

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C.T., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**CUSTOMS & BORDER PROTECTION,** )  
**Brownsville, TX, Employer** )

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**Docket No. 10-1606**  
**Issued: February 18, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 1, 2010 appellant filed a timely appeal from the April 9, 2010 merit decision of the Office of Workers' Compensation Programs which granted a schedule award for 35 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 schedule award case.

**ISSUE**

The issue is whether appellant has more than 35 percent binaural (both ears) hearing loss for which he received a schedule award.

On appeal, appellant contends that his left ear has 60 percent monaural hearing loss and his right ear has 35 percent monaural hearing loss and he "was awarded compensation of 35 percent and not the 60 percent monaural hearing loss."

## **FACTUAL HISTORY**

On June 19, 2009 appellant, then a 56-year-old supervisory inspector, filed an occupational disease claim alleging that he sustained hearing loss in both ears due to factors of his federal employment. He became aware of his hearing loss in January 2007 and first realized it was caused or aggravated by his federal employment in April 2009.

By letter dated July 6, 2009, the Office advised appellant of the evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

By letter dated September 14, 2009, the Office referred appellant and a statement of accepted facts to Dr. Gregory S. Rowin, an otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Rowin performed an otologic evaluation of appellant on September 29, 2009 and audiometric testing was obtained on his behalf that date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 35, 40, 50 and 55 decibels; left ear 60, 50, 70 and 75 decibels. Dr. Rowin determined that appellant sustained chronic asymmetric neurosensory hearing loss, left ear greater than right ear, secondary to loud noise exposure. He noted that the loss was in excess of that expected from presbycusis and recommended a hearing aid evaluation.

On October 30, 2009 an Office medical adviser reviewed Dr. Rowin's report and the audiometric test of September 29, 2009. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), appellant had 34.7 percent binaural hearing loss. The Office medical adviser noted that the date of maximum medical improvement was September 29, 2009.

By decision dated November 5, 2009, the Office accepted that appellant sustained a bilateral hearing loss, with the left worse than right due to workplace exposure to noise. On March 2, 2010 the Office authorized hearing aids.

By decision dated April 9, 2010, the Office granted appellant a schedule award for 35 percent binaural (both) hearing loss. The period of the award was from September 29, 2009 to January 31, 2011 to last 70 weeks.

## **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act (the Act)<sup>1</sup> and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

uniform standards applicable to all claimants. The A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. 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. 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. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing 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 the binaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>3</sup>

### ANALYSIS

Dr. Rowin, the referral physician concluded that appellant sustained a chronic asymmetric neurosensory hearing loss due to noise exposure and that the loss was greater in the right ear than in the left.

The Board finds that the report of Dr. Rowin conforms to applicable criteria and constitutes the weight of the medical evidence. The Office medical adviser reviewed Dr. Rowin's report and audiometric findings and properly applied the Office's standardized procedures to finding that appellant had 35 percent binaural hearing loss. On October 30, 2009 he reviewed Dr. Rowin's report and audiometric findings. The September 29, 2009 audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cycles per second levels and revealed decibel losses of 35, 40, 50 and 55 respectively in the right ear for a total decibel loss of 180 on the right. This amount was divided by 4 which resulted in an average loss of 45 decibels. The medical adviser subtracted the 25 decibel fence to equal 20 decibels. He multiplied 20 decibels by the established factor of 1.5 to result in 30 percent monaural hearing loss for the right ear. The medical adviser followed the same procedure on the left, noting that the test results at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 60, 50, 70 and 75 decibels respectively, for a total of 255 decibels. He divided 255 by 4, for an average hearing loss of 63.75 decibels, and subtracted the 25 decibel fence to equal 38.75 decibels. The medical adviser multiplied 38.75 by the established factor of 1.5, for a 58.125 percent monaural hearing loss for the left ear. He then multiplied the 30 percent monaural hearing loss for the left ear by 5, as it was the lesser loss, to find a product of 150. As the procedures provide, the Office medical adviser then added the 58.125 to the 150 percent hearing loss for the right ear, to obtain a total of 208.125 which was divided by 6 to rate a binaural hearing loss of 34.7 percent. The medical evidence of record establishes that appellant has 35

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<sup>2</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

percent binaural hearing loss.<sup>4</sup> Appellant did not submit any medical evidence to establish more than 35 percent binaural hearing loss. The Board finds that the schedule award for 35 percent binaural hearing loss was proper.

A schedule provides for payment of compensation for a specific number of weeks as prescribed by the statute.<sup>5</sup> With regard to appellant's contention that he was entitled to a schedule award for greater than 35 percent binaural loss of hearing, section 8107(c)(13)(A) of the Act provides that for 100 percent loss of hearing in one ear, a claimant is entitled to 52 weeks of compensation.<sup>6</sup> Section 8107(c)(13)(B) provides that for 100 percent loss of hearing of both ears, a claimant is entitled to 200 weeks of compensation.<sup>7</sup> As appellant sustained 35 percent binaural hearing loss, he is entitled to 70 weeks of compensation, as the Office awarded. He is entitled to no more under the Act.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant has no more than 35 percent binaural hearing loss, for which he received a schedule award.

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<sup>4</sup> *S.G.*, 58 ECAB 383 (2007).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> *Id.* at § 8107(c)(13)(A).

<sup>7</sup> *Id.* at § 8107(c)(13)(B).

<sup>8</sup> The Board notes that for his 30 percent right ear hearing loss, appellant would be entitled to 15.6 weeks of compensation and, for his 38 percent left ear hearing loss, to 30.16 weeks of compensation, a total of 45.76 weeks. Appellant is entitled to more compensation for his 35 percent binaural hearing loss (70 weeks) than he would be for separate awards for his right and left ear loss of hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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