

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

G.A., Appellant

and

DEPARTMENT OF THE AIR FORCE, CIVIL
ENGINEER SQUADRON, FAIRCHILD AIR
FORCE BASE, WA, Employer

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**Docket No. 11-274
Issued: September 6, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 16, 2010 appellant filed a timely appeal from an October 26, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant sustained more than a 13 percent left monaural hearing impairment causally related to his employment.

FACTUAL HISTORY

On December 18, 2009 appellant, then a 57-year-old supervisory facility management specialist, filed an occupational disease claim alleging that he sustained progressive, noise-

¹ 5 U.S.C. § 8101 *et seq.*

induced hearing loss for a 30-year period. He became aware of his condition and its relationship to his federal employment on April 6, 1982. Appellant detailed that he mowed airfields in a cables tractor from 1979 to 1983 and was exposed to loud noise generated by nearby aircraft. He also operated wood chippers, chainsaws, concrete saws, weed eaters and snow removal equipment without mufflers and conducted runway inspections during his employment. Appellant retired effective April 2, 2010.

A June 16, 1980 employing establishment audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 10, 0, 0 and 15 for the right ear and 10, 5, 5 and 10 for the left ear. At the same frequency levels, a November 7, 2001 audiogram showed dBA losses of 5, 10, 0 and 25 for the right ear and 5, 5, -15 and 5 for the left ear.

A March 24, 2010 statement of accepted facts specified that appellant worked for the employing establishment since 1972 as a commissary store stocker, warehouseman and materials handler, tractor operator and foreman, airfield cleaning operator, engineering equipment operator and foreman and supervisory facility management specialist. Prior to 2002, appellant was exposed to hazardous noise produced by jet engines, mowers, chainsaws, hedge trimmers, leaf blowers, heavy equipment and snow plows, blowers and sweepers.

OWCP referred appellant for a second opinion examination to Dr. M. Erik Gilbert, a Board-certified otolaryngologist. In an April 27, 2010 report, Dr. Gilbert related that appellant sustained hearing loss, particularly in his left ear, for approximately 20 years as a result of his work as a truck driver and heavy equipment operator and wore hearing aids since 2007. He did not observe any physical abnormalities on examination while an April 27, 2010 audiogram exhibited dBA losses of 5, 10, 25 and 50 for the right ear and 45, 25, 25 and 40 for the left ear at 500, 1,000, 2,000 and 3,000 Hz, respectively. Comparing the June 16, 1980 and April 27, 2010 audiograms, Dr. Gilbert noted that appellant demonstrated sensorineural loss in his right ear at and above 2,000 Hz and in his left ear at 500 Hz and above 2,000 Hz, a pattern which was consistent with occupational noise exposure. He diagnosed bilateral sensorineural hearing loss due to federal occupational noise exposure. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (hereinafter A.M.A., *Guides*) to the April 27, 2010 audiometric data, Dr. Gilbert calculated that appellant sustained a 13 percent left monaural hearing impairment and 0 percent right monaural hearing impairment.³

In a June 19, 2010 report, OWCP medical adviser concurred with Dr. Gilbert's findings and listed April 27, 2010 as the date of maximum medical improvement.

By decision dated June 18, 2010, OWCP accepted appellant's claim for bilateral noise-induced hearing loss. On October 5, 2010 appellant claimed a schedule award.

² A.M.A., *Guides* (6th ed. 2008).

³ Dr. Gilbert noted that appellant also complained of bilateral tinnitus. However, he remarked that the condition was "not significantly bothersome" as it did not affect appellant's sleep, employment or recreational activities.

On October 26, 2010 OWCP granted appellant a schedule award for 13 percent left monaural hearing loss for the period April 27 to June 13, 2010.⁴

LEGAL PRECEDENT

FECA's schedule award provision and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁶ However, FECA 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.⁷

OWCP 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 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA 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. Binaural loss is determined by first 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 OWCP's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

Appellant filed a claim for noise-induced hearing loss and was referred to Dr. Gilbert for a second opinion examination. Based on his findings, Dr. Gilbert diagnosed bilateral sensorineural hearing loss caused by occupational noise exposure and calculated that appellant sustained a ratable, 13 percent left monaural hearing impairment. Thereafter, OWCP granted an appropriate schedule award to run from April 27 to June 13, 2010.

Applying the A.M.A., *Guides* standard to the April 27, 2010 audiogram obtained by Dr. Gilbert, appellant's right ear recorded losses of 5, 10, 25 and 50 dBA. The total loss was 90

⁴ OWCP pointed out that while appellant sustained a two percent binaural hearing impairment, a schedule award based on this figure would have resulted in fewer weeks of compensation.

⁵ 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107(c)(13).

⁷ *Supra* note 5. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁸ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

dBa. When divided by four, the result was an average hearing loss of 22.5 dBA. The average hearing of 22.5 dBA was reduced by the fence of 25 dBA to 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear. At the same frequency levels, appellant's left ear recorded losses of 45, 25, 25 and 40 dBA at 500, 1,000, 2,000 and 3,000 Hz, respectively. The total loss was 135 dBA. When divided by four, the result was an average hearing loss of 33.75 dBA. The average hearing of 33.75 dBA was reduced by the fence of 25 dBA to equal 8.75 dBA. This figure was then multiplied by the established factor of 1.5, yielding 13.125 percent monaural impairment of the left ear. This was properly rounded down to 13 percent by OWCP.⁹ Accordingly, the Board finds that appellant did not sustain a left monaural hearing impairment exceeding 13 percent.

Appellant contends on appeal that he was entitled to a schedule award for both ears. In calculating binaural hearing loss, the lesser monaural loss of zero percent for the right ear is first multiplied by five to equal zero. This amount is added to the greater monaural loss of 13.125 percent for the left ear to equal 13.125, which is then divided by six to arrive at 2.1875 percent binaural hearing loss. This is then rounded down to two percent.¹⁰ As an employee is entitled to a maximum schedule award of 200 weeks of compensation for complete loss of hearing of both ears, appellant's award based on binaural hearing impairment would be 4 weeks or two percent of 200 weeks, of compensation. On the other hand, as an employee is entitled to a maximum schedule award of 52 weeks of compensation for complete loss of hearing of one ear, appellant's award based on left monaural hearing impairment would be 6.76 weeks or 13 percent of 52 weeks, of compensation. It is well established that, if calculations based on the monaural hearing loss would result in greater compensation, then the monaural hearing loss calculations should be used.¹¹ Therefore, the Board finds that OWCP properly granted a schedule award based on appellant's left monaural hearing impairment.

Appellant also argues that his schedule award should have accounted for any sensorineural loss between 4,000 and 8,000 Hz. As noted, OWCP and the Board evaluate industrial hearing impairment in accordance with the A.M.A., *Guides* standard, which does not consider losses at frequencies at or above 4,000 Hz.¹²

Appellant may request an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in increased impairment.

CONCLUSION

The Board finds that appellant did not sustain more than a 13 percent left monaural hearing impairment causally related to his employment.

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (January 2010) (fractions should be rounded down from .49 or up from .50).

¹⁰ See *id.*

¹¹ *J.H.*, 59 ECAB 377 (2008); *E.S.*, 59 ECAB 249 (2007).

¹² See *Larry S. Robinson*, Docket No. 04-1885 (issued December 3, 2004) at n. 12.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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