

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

R.T., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Fort Belvoir, VA,
Employer**

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**Docket No. 12-1809
Issued: March 25, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On August 24, 2012 appellant filed a timely appeal from an April 17, 2012 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue is whether appellant has established that he sustained more than a 25 percent binaural hearing permanent impairment in the performance of duty.

On appeal, appellant asserts that he is entitled to additional compensation beyond the period of the schedule award as the accepted hearing loss affected him permanently.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before January 1, 1988 appellant, then a 42-year-old materials handler and forklift operator, sustained a bilateral sensorineural hearing loss due to hazardous noise exposure at work. He remained exposed to hazardous noise until his retirement from the employing establishment on June 3, 2005. Appellant submitted annual employing establishment audiograms from 1985 to November 2004 obtained as part of a hearing conservation program. These audiograms show a progressive bilateral hearing loss. Employing establishment dispensary personnel counseled appellant regarding the progression of his bilateral hearing loss on December 30, 1997, December 3, 2003 and January 14, 2004.

On August 19, 2011 appellant claimed a schedule award.

On October 7, 2011 OWCP referred appellant to Dr. Eugenia Gray, a Board-certified otolaryngologist, for a second opinion examination. A statement of accepted facts noting hazardous occupational noise exposure was provided for the physician's review.

In an October 21, 2011 report, Dr. Gray diagnosed occupationally related bilateral low, mid and high frequency sensorineural hearing losses, with a possible left retrocochlear abnormality on the left accounting for an asymmetric high frequency hearing loss. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 30, 40, 45 and 50 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 45, 45 and 60 decibels. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Gray found a 24.375 percent right monaural impairment, a 30 percent left monaural impairment, resulting in a 25.3125 percent binaural permanent impairment. She recommended bilateral hearing aids.

OWCP referred Dr. Gray's reports and the medical record to an OWCP medical adviser for an impairment rating. In a December 19, 2011 report, an OWCP medical adviser concurred with Dr. Gray's diagnosis of a work-related bilateral hearing loss. He found that appellant had attained maximum medical improvement as of October 21, 2011, the date of Dr. Gray's examination. The medical adviser totaled the decibel losses for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 30, 40, 45 and 50 to equal 165. He then divided this total by 4 to obtain the average hearing loss at those cycles of 41.25 decibels. The average of 41.25 decibels was then reduced by the 25 decibel "fence" to equal 16.25. Multiplying the balance of 16.25 by 1.5 resulted in a 24.37 percent monaural hearing loss for the right ear. The medical adviser then totaled the 30, 45, 45 and 60 decibel losses in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 180. He then divided this total by 4 to obtain the average hearing loss at those cycles of 45 decibels. The average of 45 decibels was then reduced by 25 decibels to equal a balance of 20 decibels. Multiplying the balance of 20 decibels by 1.5 resulted in a 30 percent monaural hearing loss for the left ear. The medical adviser then multiplied 24.37, the lesser monaural loss, by 5, for a result of 121.85. He then added the greater monaural loss of 30, to equal 151.85. The medical adviser then divided the result of 151.85 by 6, to equal a 25.3 percent binaural sensorineural permanent hearing loss. He recommended bilateral hearing aids.

By decision dated April 17, 2012, OWCP issued appellant a schedule award for a 25 percent binaural hearing loss. The period of the award ran for 50 weeks from October 21, 2011 to October 4, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA² 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. FECA, 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 OWCP. 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 uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

OWCP 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 cps the losses at each frequency are added up and averaged.⁵ 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 OWCP's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

OWCP accepted that appellant sustained a binaural sensorineural hearing loss due to hazardous noise exposure at work. To determine her entitlement to a schedule award, it obtained a second opinion report and audiometric test results from Dr. Gray, a Board-certified otolaryngologist, who found a 25.3 percent binaural hearing loss due to occupational noise exposure. OWCP then referred Dr. Gray's findings to an OWCP medical adviser for calculation of a schedule award according to the A.M.A., *Guides*.

² 5 U.S.C. § 8107.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250 (6th ed., 2008).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ C.C., Docket No. 11-731 (issued October 11, 2011).

The medical adviser properly applied OWCP's standardized procedures to the October 21, 2011 audiogram obtained by Dr. Gray. Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 45, 45 and 60 dBA, respectively. These decibel losses were totaled at 180 and divided by 4 to obtain the average hearing loss per cycle of 45 dBA. The average of 45 was then reduced by the 25 decibel fence to equal 20 dBA for the left ear.⁹ Following the same mathematical procedure, the medical adviser totaled the 30, 40, 45 and 50 dBA losses in the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 165. He divided the total by 4 to obtain the average hearing loss at those cycles of 41.25 decibels, reduced by 25 decibels to equal 16.25.

The binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss, in this case 24.37, is multiplied by 5, equaling 121.85, then added to the greater loss of 30 for a sum of 151.85 and the total is divided by 6 to arrive at the amount of the binaural hearing loss of 25.3 rounded down to 25 percent.¹⁰

The Board finds that the medical adviser applied the proper standards to the findings in Dr. Gray's October 21, 2011 report and audiogram. The result is a 25 percent binaural hearing loss. The Board further finds that the medical adviser properly relied upon the October 21, 2011 audiogram as it was part of Dr. Gray's evaluation and met all OWCP standards.¹¹ Therefore, OWCP properly found that appellant had a 25 percent binaural hearing loss due to hazardous noise exposures at work.

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

On appeal, appellant asserts that he is entitled to compensation beyond the period of the schedule award as the accepted hearing loss affected him permanently. As stated, OWCP properly applied the appropriate grading schemes of the A.M.A., *Guides* in rating his accepted bilateral hearing loss, resulting in a 50-week schedule award period commencing on October 21, 2011, the date of maximum medical improvement.¹² Appellant did not submit probative medical evidence establishing a greater percentage of permanent impairment, which would have resulted in a longer payment period.

⁹ The decibel fence is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 dBA or less. See A.M.A., *Guides* 250.

¹⁰ The policy of OWCP is to round the calculated percentage of impairment to the nearest decimal point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 2003).

¹¹ See Federal (FECA) Procedure Manual, *id.* at *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹² Under 5 U.S.C. § 8107(c)(13)(B), a complete or 100 percent, loss of hearing in both ears entitles an employee to 200 weeks of compensation. Since the medical evidence, as explained, establishes that appellant has 25 percent loss of hearing in both ears, he was properly awarded 50 weeks of compensation (25 percent of 200 weeks).

CONCLUSION

The Board finds that appellant has not established that he sustained greater than a 25 percent binaural hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2012 is affirmed.

Issued: March 25, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board