

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

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**J.T., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY, WATTS  
BAR NUCLEAR PLANT, Spring Hill, TN,  
Employer**

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**Docket No. 15-910  
Issued: June 17, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On March 23, 2015 appellant filed a timely appeal from a February 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 established greater than an 11 percent binaural hearing loss causally related to his federal employment, for which he received a schedule award.

**FACTUAL HISTORY**

Appellant, a 65-year-old machinist/welder, filed an occupational disease claim (Form CA-2) on September 3, 2014, alleging a bilateral hearing loss caused by factors of his federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment. He has been exposed to loud noises from cranes, large rock drills, air movers, barges, tugboats, forklifts, pneumatic tools, and welding shops since 1973. Appellant occasionally used earplugs for protection. He submitted audiograms from 1976, 1977, 1986, and September 3, 2014 which showed mild bilateral hearing loss.

On December 4, 2014 OWCP referred appellant along with a statement of accepted facts, to Dr. Joseph A. Motto, a Board-certified otolaryngologist, for a second opinion. In a December 9, 2014 report, Dr. Motto stated that appellant's workplace noise exposure was sufficient as to intensity and duration to have caused the hearing loss in question. He diagnosed mild-to-moderately severe noise-induced sensorineural hearing loss and opined that this condition was due to noise exposure at his federal employment. Dr. Motto recommended hearing aids. An audiogram performed on his behalf on January 23, 2013 reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following decibel losses: 40, 35, 30, and 45 for the right ear and 30, 25, 30, and 40 for the left ear respectively. Based on these results and in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed.) (A.M.A., *Guides*), Dr. Motto determined that appellant had a 10.9375 percent binaural hearing loss.

In a December 18, 2014 report, an OWCP medical adviser reviewed Dr. Motto's report and audiometric test results. He concurred with Dr. Motto's audiometric findings that appellant had a 18.75 percent monaural hearing loss in the right ear, a 9.375 percent monaural hearing loss in the left ear, and found that appellant had an 11 percent sensorineural binaural hearing loss. The medical adviser determined that the date of maximum medical improvement was December 9, 2014, the date of Dr. Motto's examination, and authorized hearing aids.

On January 21, 2015 OWCP accepted appellant's claim for binaural hearing loss.

On February 12, 2015 appellant filed a Form CA-7 claim for a schedule award based on his binaural hearing loss.

By decision dated February 24, 2015, OWCP granted appellant a schedule award for an 11 percent binaural hearing loss. This award covered the period December 9, 2014 to May 11, 2015 for a total of 22 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</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, 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

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</sup> 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.<sup>6</sup> 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.<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 OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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.

### ANALYSIS

OWCP accepted that appellant sustained a bilateral hearing loss due to noise. It developed the claim by referring him to Dr. Motto. On December 9, 2015 Dr. Motto examined appellant and an audiogram was obtained on the physician's behalf. He found, using OWCP's standard procedures, that appellant's noise exposure in his federal employment was sufficient to cause binaural hearing loss. The December 9, 2015 audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 cycles per second and recorded decibel losses of 40, 35, 30, and 45 respectively in the right ear. The total decibel loss in the right ear is 150. When divided by 4, the result is an average hearing loss of 37.5 decibels. The average of 37.5 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 12.5 decibels, which when multiplied by the established factor of 1.5 computes a 18.75 percent hearing loss in the right ear.

The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000, and 3,000 cycles per second and recorded decibel losses of 30, 25, 30, and 40 respectively. The total decibel loss in the left ear is 125. When divided by four, the result is an average hearing loss of 31.25 decibels. The average hearing loss of 31.25 is reduced by the fence of 25 decibels to 6.25, which when multiplied by the established factor of 1.5 computes a 9.375 percent hearing loss in the left ear. The binaural loss is determined by multiplying the lessor loss of 9.375 by five, this sum of

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<sup>4</sup> *Id.*

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b (January 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

46.875 is then added to the greater loss of 18.75 to total 65.625, this sum is then divided by 6 to determine the amount of the binaural loss. Therefore under this calculation appellant had an 11 percent binaural hearing loss, which was properly rounded up to 11 percent binaural loss.<sup>10</sup>

It is well established that, if calculations based on the monaural loss for each ear would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used.<sup>11</sup> In this case, appellant's compensation is greater under the procedures used for calculating binaural loss. The maximum number of weeks of compensation for binaural hearing loss is 200 weeks. *See* 5 U.S.C. § 8107(c)(13)(b). Appellant's monaural hearing loss of the left ear is 9 percent, whereas his monaural hearing loss of the right ear is 19 percent. The maximum number of weeks of compensation for monaural hearing loss is 52 weeks. *See* 5 U.S.C. § 8107(c)(13)(a). Nine percent of 52 weeks equals 4.68 weeks of compensation, and 19 percent of 52 weeks equals 9.88 weeks. The 11 percent binaural hearing loss award of 22 weeks of compensation is therefore the greater award.

Although appellant submitted results from 1976, 1977, 1986, and September 3, 2014 audiometric tests which showed mild bilateral hearing loss, these audiograms are insufficient to satisfy appellant's burden of proof as they did not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. The audiograms were not accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy appellant's burden of proof.<sup>12</sup>

Dr. Motto provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were due to the noise in appellant's employment. The Board finds that his January 23, 2013 audiometric test results showing an 11 percent sensorineural binaural hearing loss represents the weight of the evidence. As there was no other medical evidence showing that appellant had a greater hearing loss causally related to employment factors, the Board affirms OWCP's February 24, 2015 decision granting appellant a schedule award based on an 11 percent binaural hearing loss.

### **CONCLUSION**

The Board finds that appellant has no greater than an 11 percent binaural hearing loss causally related to his federal employment, for which OWCP granted him a schedule award.

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<sup>10</sup> *Supra* note 5 at Chapter 3.700.4b(2)(b) (January 2010). *See also* *R.C.*, Docket No. 14-502 (issued July 2, 2014). OWCP procedures provide that, in computing hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded up from .50.

<sup>11</sup> *See Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>12</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 24, 2015 is affirmed.

Issued: June 17, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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