

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

ROBERT E. CULLISON, Appellant

and

**DEPARTMENT OF THE ARMY, ROCK
ISLAND ARSENAL, AMMUNITION
ACTIVITY, CRANE, IL, Employer**

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**Docket No. 04-641
Issued: June 2, 2004**

Appearances:
Robert E. Cullison, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 12, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 2, 2003, granting a schedule award for loss of hearing in his left ear. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than 5.625 percent loss of hearing in his left ear, for which he received a schedule award.

FACTUAL HISTORY

On January 27, 2003 appellant, then a 58-year-old explosives operator, filed a notice of occupational disease alleging that he developed a bilateral loss of hearing due to noise exposure in the performance of duty. In support of his claim, appellant submitted a series of audiograms.

The Office referred appellant for a second opinion evaluation with Dr. William R. Pugh, a Board-certified otolaryngologist, on May 22, 2003. In a report and accompanying audiogram dated June 13, 2003, Dr. Pugh determined that appellant had a bilateral sensorineural hearing loss due to noise exposure in the course of his federal employment. The Office accepted appellant's claim for bilateral noise-induced hearing loss on August 6, 2003.

Appellant requested a schedule award on August 11, 2003. The Office medical adviser reviewed Dr. Pugh's June 13, 2003 report and concluded that appellant did not have a ratable hearing loss in his right ear, but had 5.625 percent loss of hearing in his left ear and that appellant had 5 percent permanent impairment of his left ear due to tinnitus.

By decision dated October 2, 2003, the Office granted appellant a schedule award for 5.625 percent loss of hearing in his left ear. The Office further stated: "The weekly pay rate was established without including hazard pay as that information was not made available to this office. Once that information is received from the employer your weekly pay rate will be adjusted accordingly and any monies owed you will be paid."¹

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

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 (cps), the losses at each frequency are added up and averaged.⁵ 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.⁶ The remaining

¹ Following the October 2, 2003 decision, the employing establishment submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2003).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

In support of his claim for an employment-related loss of hearing, appellant submitted a series of audiograms. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing. The audiograms were not certified by a physician as being accurate. The Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist.¹⁰ Due to the lack of appropriate medical evidence, the Office referred appellant for a second opinion examination by Dr. Pugh, a Board-certified otolaryngologist. The June 13, 2003 report and accompanying audiogram from Dr. Pugh complied with the Office's standard for medical evidence in determining a loss of hearing as it included both an appropriate audiogram and a report from a Board-certified otolaryngologist confirming findings of the audiogram.¹¹ On July 23, 2003 the Office medical adviser reviewed the otologic and audiologic testing performed by Dr. Pugh on June 13, 2003 and applied the Office's standardized procedures to this evaluation. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cps were added and averaged and the "fence of 25 decibels was deducted."¹² The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For levels recorded in the left ear of 10, 25, 15 and 65, the above formula derives 5.625 percent monaural loss and for levels recorded in the right ear of 10, 15, 10 and 35, the above formula derives 0 percent monaural loss. The policy of the Office is to round the calculated percentage of impairment to the nearest whole point.¹³ Therefore, appellant is entitled to a schedule award for a six percent loss of hearing in his left ear and is not entitled to a schedule award for loss of hearing in his right ear as this impairment is not yet ratable in accordance with the standards of the A.M.A., *Guides*.¹⁴

⁷ *Id.*

⁸ *Id.*

⁹ *Donald Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹¹ *George L. Cooper*, 40 ECAB 296, 303 (1988); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹² The A.M.A., *Guides* points out that the loss below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions.

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

¹⁴ The Board has long recognized that if a claimant's employment-related hearing loss worsens in the future, the claimant may apply for an additional schedule award for any increased permanent impairment. *Paul R. Reedy*, 45 ECAB 488, 490 (1994).

The Office medical adviser further found that appellant had a five percent impairment of his left ear due to tinnitus under the A.M.A., *Guides*.¹⁵ The A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: “Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”¹⁶ The A.M.A., *Guides* states, as follows:

“Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment.”¹⁷

The Office medical adviser estimated five percent monaural impairment of the left ear due to tinnitus impacting the ability to perform the activities of daily living. However, speech discrimination scores were 100 percent bilaterally indicating no impairment. The Office medical adviser offered no rationale for his conclusion that appellant’s tinnitus impacted his ability to perform activities of daily living. As the Office medical adviser did not demonstrate how he integrated this information with the objective data on appellant’s speech discrimination scores, the Board cannot find that he followed the procedure set forth in the fifth edition of the A.M.A., *Guides*.¹⁸ The Office properly excluded this aspect from the impairment rating when calculating appellant’s entitlement to a schedule award.

Appellant is entitled to receive a schedule award for a six percent loss of hearing in his left ear. The schedule award provision of the Act specify the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.¹⁹ Since appellant had a 6 percent loss of use of his left ear, he is entitled to 6 percent of 52 weeks of compensation or 3.12 weeks of compensation rather than the 11.25 awarded by the Office.²⁰ As the Office has not reached a final decision regarding appellant’s correct rate of pay for the purposes of his schedule award, the Board will not address this issue on appeal.²¹

¹⁵ A.M.A., *Guides*, 246.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Edmundo L. Garcia*, Docket No. 03-176 (issued March 27, 2003).

¹⁹ 5 U.S.C. § 8107. Section 8107(c)(13)(A) provides 52 weeks of compensation for complete loss of hearing of one ear.

²⁰ The Office apparently applied the number of weeks of compensation available for loss of use of both ears, 200 weeks, in finding 11.25 weeks of compensation for a 5.625 percent loss of hearing in the left ear. *See* 5 U.S.C. § 8107(c)(13)(B).

²¹ 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has no more than six percent loss of hearing in his left ear for which he is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member