

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

---

**DAVID M. RIZKALLAH, Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, FOOD  
SAFETY & INSPECTION SERVICE, Industry,  
CA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 05-632  
Issued: June 6, 2005**

*Appearances:*  
*David M. Rizkallah, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On January 18, 2005 appellant filed a timely appeal of the June 18, 2004 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award for binaural hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim for a schedule award.

**ISSUE**

The issue is whether appellant has more than a 40 percent binaural hearing loss, for which he received a schedule award.

**FACTUAL HISTORY**

On April 6, 2001 appellant, then a 65-year-old veterinary medical officer, filed an occupational disease claim for hearing loss. He identified June 27, 2000 as the date he first became aware of his employment-related illness. On October 17, 2001 the Office accepted appellant's claim for bilateral noise-induced hearing loss. In a decision dated June 20, 2002, the

Office awarded him a schedule award for a 40 percent binaural hearing loss. The Office based its determination on the December 20, 2001 calculation of its medical adviser, who in turn, relied on the October 11, 2001 audiological evaluation and report submitted by Dr. Montra M. Kanok, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 80 weeks, from October 11, 2001 to April 23, 2003.

On April 9, 2003 appellant requested additional compensation for his accepted hearing loss. He claimed that he had nerve degeneration and that his condition had deteriorated based on a recent audiogram administered on April 4, 2003. Appellant filed a claim (Form CA-7) for an additional schedule award on April 18, 2003. He later submitted an April 29, 2003 report from Dr. Robert Habbestad, a Board-certified otolaryngologist.

The Office referred the record to its medical adviser who, in a report dated May 30, 2003, found that there was no new information submitted that would change the prior schedule award. Appellant was noted to have a 40 percent binaural hearing loss.

On May 4, 2004 the Office received a March 17, 2004 audiogram from Dr. Habbestad, which accompanied a March 24, 2004 request for hearing aids.

In a June 18, 2004 decision, the Office denied appellant's claim for additional hearing loss. The Office explained that he had previously received a schedule award for 40 percent binaural hearing loss and his present hearing loss did not exceed the amount previously awarded.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use, of specified members, functions and organs of the body.<sup>1</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</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>4</sup> 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

---

<sup>1</sup> 5 U.S.C. § 8107(a)(c). The Act provides that, for a total of 100 percent loss of hearing of both ears, an employee shall receive 200 weeks of compensation. 5 U.S.C. § 8107(c)(13)(B).

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (January 29, 2001).

<sup>4</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

hear everyday speech under everyday conditions.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>7</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>8</sup>

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. Absent additional employment exposure, an increased schedule award may also be based on medical evidence demonstrating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.<sup>9</sup>

### ANALYSIS

Appellant received a June 20, 2002 schedule award for 40 percent binaural hearing loss. The award covered a period of 80 weeks extending through April 23, 2003. Just prior to the expiration of the June 20, 2002 schedule award, appellant requested additional compensation. His claim was premised on alleged nerve degeneration and deterioration in his hearing as purportedly demonstrated on an April 4, 2003 audiogram. Appellant also submitted an April 29, 2003 report from Dr. Habbestad. The Office also received a March 17, 2004 audiogram.

The medical evidence submitted by appellant in support of his claim for an additional schedule award does not demonstrate that he has a greater loss than the prior award for a 40 percent binaural impairment.<sup>10</sup> Dr. Habbestad's April 29, 2003 handwritten report is largely illegible and there is no indication that he provided an impairment rating. Additionally, neither the April 4, 2003, nor March 17, 2004 audiograms are suitable for determining the extent of appellant's permanent hearing impairment. These two studies do not include measurements at

---

<sup>5</sup> *Id.*

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

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

<sup>8</sup> *Donald E. Stockstad*, 53 ECAB \_\_\_\_ (Docket No. 01-1570, issued January 23, 2002), *pet. for recon. granted* (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

<sup>9</sup> *Linda T. Brown*, 51 ECAB 115 (1999).

<sup>10</sup> In reviewing appellant's October 11, 2001 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 45, 50, 50 and 65, respectively, for a total of 210 decibels. This figure when divided by 4 results in an average hearing loss of 52.5 decibels. The average loss of 52.5 is reduced by 25 decibels to equal 27.5, which, when multiplied by 1.5 results in a 41.25 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 40, 50, 55 and 60 decibels respectively, for a total of 205 decibels. Utilizing the above-noted formula, results in a 39.4 percent monaural hearing loss for the left ear. The left and right hearing losses represent a 39.7 percent binaural hear loss, which is properly rounded up to 40 percent. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

3,000 hertz, which is essential for determining hearing impairment under the A.M.A., *Guides*.<sup>11</sup> Accordingly, the medical evidence of record does not establish that appellant has greater than a 40 percent binaural impairment.

**CONCLUSION**

The Office properly found that appellant did not have more than a 40 percent binaural hearing impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

---

<sup>11</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001). The April 4, 2003 and March 17, 2004 audiograms also do not indicate if the equipment utilized was properly calibrated.