

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

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**R.B., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 06-1830  
Issued: December 5, 2006**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 7, 2006 appellant filed a timely appeal of a July 27, 2006 merit decision of the Office of Workers' Compensation Programs which granted him a schedule award for a 43 percent binaural hearing loss and authorized hearing aids. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than a 43 percent binaural hearing loss, for which he received a schedule award.

**FACTUAL HISTORY**

On October 26, 2004 appellant, then a 79-year-old retired machinist, filed a claim for an occupational disease alleging that on October 10, 2004 he first realized that his hearing loss in both ears was caused by factors of his federal employment.<sup>1</sup> He became aware of his hearing

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<sup>1</sup> The record reveals that appellant retired from the employing establishment on June 28, 1977.

loss after undergoing a hearing test. Appellant stated that he believed his hearing loss happened slowly.

By letter dated June 1, 2005, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Richard W. Seaman, a Board-certified otolaryngologist, for a second opinion medical examination.

In a June 28, 2005 report, Dr. Seaman diagnosed noise-induced bilateral hearing loss and bilateral sensorineural hearing loss with presbycusis. He stated that, at the beginning of appellant's employment around 1955, he had a mild high frequency loss in the left ear that was of no consequence. Based on a comparison to present audiometric findings, appellant showed a marked sensorineural loss in excess of what would be predicted on the basis of presbycusis. Dr. Seaman stated that a 1976 employing establishment audiogram showed definite progressive high frequency noise-induced sensorineural hearing loss that was ratable at the time appellant left the employing establishment. He opined that appellant's workplace noise exposure was sufficient as to intensity and duration to have caused his hearing loss. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*), Dr. Seaman determined that appellant had a 43 percent binaural hearing loss. He recommended bilateral hearing aids. A June 28, 2005 audiogram performed by Dr. Alexander Roberson, an audiologist, accompanied Dr. Seaman's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of 40, 50, 60 and 65, respectively and in the left ear decibel losses of 45, 45, 60 and 70, respectively.

On July 29, 2005 an Office medical adviser reviewed the medical evidence, including Dr. Seaman's June 28, 2005 report. He found that appellant sustained work-related binaural high frequency sensorineural hearing loss and reached maximum medical improvement on June 28, 2005. The Office medical adviser determined that appellant had a 43.4 percent binaural hearing loss based on the A.M.A., *Guides*, 247, 248, Tables 11-1, 11-2. He also recommended hearing aids.

By letter dated April 11, 2006, the Office accepted appellant's claim for bilateral noise-induced hearing loss and authorized hearing aids. On April 19, 2006 appellant filed a claim for a schedule award.

By decision dated July 27, 2006, the Office granted appellant a schedule award for a 43 percent binaural hearing loss for the period June 28, 2005 through February 19, 2007, for a total of 86 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>4</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.<sup>7</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 hear everyday speech under everyday conditions.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</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>10</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>11</sup>

### ANALYSIS

Dr. Seaman, the second opinion specialist, examined appellant and submitted a report on June 28, 2005. He found that appellant sustained bilateral sensorineural hearing loss and bilateral sensorineural hearing loss with presbycusis related to noise exposure in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the June 28, 2005 audiogram obtained by Dr. Seaman.

Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 40, 50, 60 and 65, respectively, for a total of 215 decibels. When divided by 4, the result is an average hearing loss of 53.75 decibels. The average loss of 53.75 decibels is reduced by 25 decibels to equal 28.75, which, when multiplied by the established factor of 1.5, results in a 43.13 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 45, 45, 60 and 70, respectively, for a total of 220 decibels. When divided by 4, the result is an

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<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404 (1999); *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

<sup>6</sup> A.M.A., *Guides* 250.

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

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *Donald E. Stockstad*, *supra* note 5.

average hearing loss of 55 decibels. The average loss of 55 decibels is reduced by 25 decibels to equal 30, which, when multiplied by the established factor of 1.5, results in a 45 percent hearing loss for the left ear.

To compute the binaural hearing loss, the lesser loss in the right ear, 43.13 percent, is multiplied by the established factor of 5, added to the 45 percent loss in the left ear and this sum is divided by the established factor of 6 to calculate a 43.44 percent binaural hearing loss. The Board finds that the Office medical adviser properly applied the Office's standards to the findings stated in Dr. Seaman's June 28, 2005 report and accompanying audiogram. This resulted in a 43 percent binaural hearing loss.<sup>12</sup> The Board notes that the medical evidence establishes that he has more than a 43 percent binaural hearing loss for which he received a schedule award.

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>13</sup> The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.<sup>14</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>15</sup> so appellant's award of compensation for a 43 percent binaural hearing loss entitled him to 43 percent of 200 weeks of compensation or 86 weeks of compensation from June 28, 2005 to February 19, 2007.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 43 percent binaural hearing loss, for which he received schedule award compensation.

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<sup>12</sup> The Board notes that the policy of the Office is to round the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

<sup>13</sup> 5 U.S.C. § 8107(c).

<sup>14</sup> 5 U.S.C. § 8107(c)(13)(B).

<sup>15</sup> 5 U.S.C. § 8107(c)(19).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2006  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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