

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

O.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION)
DIVISION, JACKSONVILLE AIR-MARINE)
BRANCH, Jacksonville, FL, Employer)

Docket No. 06-2119
Issued: February 5, 2007

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 21, 2006 appellant filed a timely appeal from an August 7, 2006 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained greater than a two percent monaural hearing loss in the left ear, for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that on or before February 1, 2006 appellant, then a 46-year-old law enforcement officer and pilot, sustained a bilateral sensorineural hearing loss due to hazardous noise exposure from helicopters, turbine aircraft and weapons fire.¹

On June 14, 2006 the Office referred appellant and a statement of accepted facts to Dr. R. Michael Loper, a Board-certified otolaryngologist, for a second opinion evaluation. In a June 29, 2006 report, Dr. Loper opined that appellant had a bilateral high frequency sensorineural hearing loss. He related appellant's complaints of constant bilateral tinnitus. Dr. Loper opined that appellant's hearing loss was caused by prolonged hazardous noise exposure at work. He obtained audiometric test results. 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 10, 10, 25 and 30 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 25, 20 and 35 respectively. Dr. Loper commented that appellant was a borderline candidate for hearing aids. He did not opine that appellant's tinnitus affected his ability to perform the activities of daily living.

On July 11, 2006 the Office referred the record and statement of accepted facts to an Office medical adviser to determine the extent of appellant's hearing loss. In a July 12, 2006 report, the Office medical adviser determined that appellant had a ratable monaural sensorineural hearing loss. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 25 and 30 respectively. These decibels were totaled at 75 and were divided by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels to equal zero, resulting in a zero percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 25, 30 and 35 respectively. These decibels were totaled at 105 and were divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels to equal 1.25 which was multiplied by the established factor of 1.5 to compute a 1.88 percent loss of hearing for the left ear, rounded up to 2 percent.

On July 17, 2006 appellant filed a schedule award claim.

By decision dated August 7, 2006, the Office granted appellant a schedule award for a two percent monaural hearing loss. The period of the award ran from June 29 to July 6, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, 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

¹ Appellant submitted 1986 and 1987 audiograms performed prior to his federal employment. These audiograms do not demonstrate a ratable hearing loss.

² 5 U.S.C. §§ 8101-8193.

rests in the sound discretion of the Office. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

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 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 the Office's adoption of this standard for evaluating hearing loss.⁸

Regarding tinnitus, the A.M.A., *Guides* states that “[t]innitus 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 the activities of daily living.⁹

ANALYSIS

The Office accepted that appellant sustained a binaural high frequency sensorineural hearing loss due to hazardous noise exposure at work. To determine appellant's entitlement to a schedule award, the Office obtained a second opinion report and audiometric test results from Dr. Loper, a Board-certified otolaryngologist, who found a bilateral high frequency sensorineural hearing loss. The Board finds that Dr. Loper used the appropriate portions of the A.M.A., *Guides* and accurately calculated a two percent monaural hearing loss on the left and a zero percent hearing loss on the right. He did not note any additional impairment for tinnitus. An Office medical adviser concurred with Dr. Loper's calculation of a two percent monaural hearing loss. Based on the Office medical adviser's interpretation of the audiometric tests obtained by Dr. Loper, the Office granted appellant a schedule award for a two percent monaural hearing

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

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001). The Board notes that, while the November 15, 1999 schedule award was calculated while the fourth edition of the A.M.A., *Guides* was still in effect, this is nondispositive on the present appeal.

⁹ *Supra* note 4 at 246.

loss. The Board finds that the Office properly found that appellant had a two percent monaural hearing loss due to hazardous noise exposures at work.

The Board notes that appellant had symptoms of bilateral tinnitus. The A.M.A., *Guides*, provides that tinnitus, in the presence of unilateral or bilateral hearing impairment, may impair speech discrimination and provides for up to a five percent rating for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform activities of daily living.¹⁰ In this case, Dr. Loper related appellant's complaints of bilateral tinnitus. However, he did not opine that tinnitus affected appellant's ability to perform activities of daily living. The Office medical adviser also did not find any additional impairment for tinnitus. There is no medical evidence of record contrary to these opinions. Therefore, appellant has not established that he is entitled to receive an additional schedule award for tinnitus.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than a two percent monaural hearing loss in the performance of duty, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 7, 2006 is affirmed.

Issued: February 5, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Supra* note 4 at 246; *Juan A. Trevino*, 54 ECAB 356 (2003).