

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

T.S., Appellant

and

**TENNESSEE VALLY AUTHORITY,
Chattanooga, TN, Employer**

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**Docket No. 06-2171
Issued: February 8, 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 a merit decision of the Office of Workers' Compensation Programs dated June 22, 2006 denying his claim for a schedule award. Pursuant to 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 a ratable hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On January 5, 2006 appellant, then a 52-year-old electrician, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to factors of his employment. He alleged that he was constantly working around power equipment including generators and turbines inside the hydroplant which created loud noise all day. Accompanying the claim was appellant's personnel and medical records. The medical records included audiometric records

dated February 4, 1999, February 9, 2000, February 2, 2001, May 8 and October 27, 2003 as well as audiogram records. There is no indication that this audiometric testing was performed by an audiologist or that the audiograms were verified by an otolaryngologist.

In a letter dated February 21, 2006, the Office informed appellant that the information was not sufficient to support his claim. The Office requested additional factual and medical evidence necessary to adjudicate his claim. In response, appellant submitted a description of his noise exposure during the course of both his federal employment and military service.

By letter dated March 30, 2006, the Office informed appellant that he was being referred for a second opinion. A statement of accepted facts was enclosed with the letter.

By letter dated April 4, 2006, the Office referred appellant to Dr. Frank Little, Jr., a Board-certified otolaryngologist, for an evaluation to determine whether he had an employment-related hearing loss. Dr. Little obtained an audiogram on April 19, 2006. The audiogram reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 20, 10, 10 and 15 respectively and on the right of 15, 10, 15 and 10.¹ Dr. Little diagnosed very mild high frequency sensory loss.

On May 2, 2006 the Office's medical adviser reviewed Dr. Little's report and audiometric test results. The medical adviser concluded that appellant had a bilateral sensory hearing loss but that it was not ratable.

In a letter dated May 4, 2006, the Office advised appellant that his claim had been accepted for bilateral hearing loss.

By decision dated June 22, 2006, the Office denied his claim for a schedule award because his hearing loss was not ratable.

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 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) (A.M.A., *Guides*), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

¹ Dr. Little did include the results for bone conduction testing on both ears but the results did not reveal a significant air-bone gap.

² 5 U.S.C. §§ 8101-8193.

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

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 losses.⁸

In order to establish a work-related loss of hearing, the Office requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngologist and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Office procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report must include: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.⁹

ANALYSIS

Office procedures advise that a certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the tests were conducted met the specified accreditation standards.¹⁰ In the present case, the audiograms submitted by appellant from the employing establishment were not properly certified and reviewed by a physician. The Office therefore requested further audiometric and otologic evaluation. The Office properly referred appellant to Dr. Little for further testing.

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994); see also *Luis M. Villanueva*, 54 ECAB 666 (2003).

¹⁰ *Vernon Brown*, 54 ECAB 376 (2003).

An Office medical adviser reviewed the otologic and audiologic testing performed by Dr. Little and correctly applied the Office's standardized procedures to the April 19, 2006 audiogram. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 15 and 10 respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss per cycle of 12.5. The average of 12.5 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the right ear. The 0 was multiplied by the 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 10, 10 and 15 respectively. These decibel losses were totaled at 55 and divided by 4 to obtain the average hearing loss per cycle of 13.75. The average of 13.75 was then reduced by the 25 decibel fence to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Office medical adviser properly found that appellant did not have a ratable hearing loss in either ear under the A.M.A., *Guides*.

The Board finds that the Office medical adviser applied the proper standards to the April 19, 2006 audiogram. The result is a nonratable hearing loss bilaterally.¹¹ The Office medical adviser properly relied on the April 19, 2006 audiogram as it was part of Dr. Little's evaluation and met all the Office standards.¹²

The Office accepted that appellant has an employment-related hearing loss. He would be entitled to medical benefits related to his hearing loss, including hearing aids, if medically necessary. However, Dr. Little and the Office medical adviser have concluded that appellant does not require hearing aids.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.

¹¹ To determine the binaural hearing loss, the lesser loss is multiplied by five and added to the greater loss and divided by six. Appellant has a zero percent binaural hearing loss.

¹² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2006 is affirmed.

Issued: February 8, 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