

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

V.T., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL)
SHIPYARD, Philadelphia, PA, Employer)

**Docket No. 07-913
Issued: July 12, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2007 appellant filed a timely appeal from Office of Workers' Compensation Programs' schedule award decisions dated October 26, 2006 and February 8, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decisions.

ISSUE

The issue is whether appellant has more than a 10 percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On September 26, 2005 appellant, a 59-year-old equipment mechanic, filed a claim alleging that he sustained a binaural hearing loss causally related to factors of his federal employment. A statement of accepted facts dated April 20, 2006 indicated that appellant had been exposed to hazardous noise while working for the employing establishment in various positions.

In an audiologic and otologic evaluation dated June 5, 2006, Dr. John E. Biteman, Board-certified in otolaryngology, noted findings based on an audiological evaluation of that date. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 25, 40, 25 and 35 decibels; and left ear -- 30, 40, 30 and 40 decibels. Dr. Biteman concluded that appellant had a binaural hearing loss of 10 percent, which he attributed to noise exposure in appellant's federal employment.

In a memorandum dated August 14, 2006, an Office medical adviser agreed with Dr. Biteman that appellant had a 10 percent binaural hearing loss.

On October 26, 2006 the Office granted appellant a schedule award for a 10 percent binaural hearing loss for the period June 5 to October 26, 2006, a total of 20 weeks of compensation.

On November 13, 2006 appellant requested reconsideration of the October 26, 2006 decision. He submitted a copy of an October 19, 2006 audiogram. The audiogram was not certified as accurate by a physician.

By decision dated February 8, 2007, the Office denied modification of the October 26, 2006 schedule award, finding that he failed to submit medical evidence establishing that he had greater impairment due to his employment-related hearing loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and the implementing federal regulation² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.304.

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁶ Then the remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. 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 binaural hearing loss.⁷

ANALYSIS

The Board finds that appellant has no more than a 10 percent binaural hearing loss, for which he received an award. With regard to his right ear, Dr. Biteman's June 5, 2006 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the following thresholds were reported -- 25, 40, 25 and 35 decibels. These decibels totaled 125 and when divided by 4, obtains an average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 6.5 decibels, which when multiplied by the established factor of 1.5, totals a 9.4 percent hearing loss in the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz, revealed decibel losses of 30, 40, 30 and 40 respectively. These decibels total 140 which, when divided by 4, obtains an average hearing loss at those cycles of 35 decibels. The average of 35 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 10 decibels, which when multiplied by the established factor of 1.5 totals a 15 percent hearing loss in the left ear.

To determine the binaural loss the lesser loss of 9 decibels was multiplied by 5 to equal 45 decibels and then added to the greater loss of 15 decibels to equal 60 decibels. This sum was then divided by 6 to reach a total binaural loss of 10 percent. The Office medical adviser properly determined that appellant had a 10 percent binaural hearing loss.

The Board notes that both Dr. Biteman and the Office medical adviser properly applied the applicable standards of the A.M.A., *Guides* to determine that appellant had a 10 percent binaural hearing loss. The Board will affirm this award. There is no other probative evidence of record establishing that he sustained any greater impairment.⁸

Following the October 26, 2006 decision, appellant requested reconsideration and submitted the October 19, 2006 audiogram. However, it was not certified by a physician as being accurate. It is well established that the Office does not have to review every uncertified audiogram submitted to the record.⁹ It is appellant's burden to submit a properly certified

⁶ A.M.A., *Guides* 250 (5th ed. 2001).

⁷ *Id.* See also *Danniel C. Goings*, *supra* note 3.

⁸ The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

⁹ See *Robert E. Cullison*, 55 ECAB 570 (2004); *James A. England*, 47 ECAB 115 (1995).

audiogram for review. The Office is not required to rely on this evidence in determining the degree of appellant's hearing loss. The Board therefore affirms the February 8, 2007 and October 26, 2006 Office decisions.

CONCLUSION

The Board finds that appellant has no more than a 10 percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2007 and October 26, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 12, 2007
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