

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, ALBANY GENERAL
MAIL FACILITY, Albany, NY, Employer**

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**Docket No. 06-1639
Issued: June 28, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2006 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated June 7, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than an 11.25 percent monaural, left ear, loss of hearing for which he received a schedule award. On appeal, appellant contends that he is entitled to a schedule for a binaural loss of hearing.

FACTUAL HISTORY

On March 17, 2000 appellant, then a 54-year-old mechanic, filed an occupational disease claim, alleging hearing loss caused by exposure to noise at the employing establishment. He provided the results of an audiogram conducted by the employing establishment on March 8, 2000, showing losses in the right ear of 20, 5, 10 and 40 and losses in the left ear of 25, 20, 25 and 60, respectively, for frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps).

Appellant reported ringing in his ears and fluctuating hearing loss. The test was administered by Millie Velez, who provided an assessment of moderate bilateral high frequency hearing loss. He also submitted information related to noise monitoring and an Occupational Safety and Health Administration (OSHA) noise violation at the employing establishment in January 2000.

The Office referred appellant for a second opinion with Dr. Edward C. Brandow, Jr., a Board-certified otolaryngologist, and Marilyn Franstov, an audiologist. In the statement of accepted facts, the Office noted that appellant performed maintenance and preventive maintenance of mail processing equipment and building equipment. The Office noted that he was not exposed to noise levels above permissible OSHA limits.

Based on an audiogram conducted by Ms. Franstov on June 16, 2000, Dr. Brandow found losses of 10, 5, 5 and 45 decibels (dB) in the right ear and 15, 10, 10 and 55 decibels in the left ear. Because these losses averaged less than 25 decibels per ear, he reported a binaural hearing loss of 0 percent. Dr. Brandow indicated that appellant had bilateral high-tone sensorineural hearing loss. He stated that the configuration of the audiogram was consistent with acoustic trauma but that it was “difficult to state a causal relationship when there [was] no audiogram for comparison.” Dr. Brandow also indicated that he believed appellant’s tinnitus was related to noise exposure at the employing establishment.

By decision dated August 3, 2000, the Office accepted appellant’s claim for hearing loss due to employment-related noise exposure. It applied the standards of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (fourth edition) and found that appellant’s hearing loss was not severe enough to be ratable and, therefore, he was not entitled to compensation. The Office also denied the claim for additional medical benefits because it found that hearing aids would not benefit him.

On December 2, 2004 appellant filed a claim for a schedule award. On January 31, 2005 the Office requested additional medical information from appellant and his doctor. Appellant provided an electronically signed otolaryngology progress report from physician’s assistant David Kerr, dated July 9, 2004. The report indicated that an audiogram done that day “was normal or boarder-line normal to about 2 kHz [kilohertz] where it drops off to about 60 dB at 3 kHz, 4 kHz, 6 kHz and 8 kHz.” Appellant also provided an electronically signed progress report from Mr. Kerr dated July 18, 2005. The 2005 report indicated that the audiogram results were unchanged from the 2004 audiogram. All three of these records indicated that appellant complained of tinnitus.

On May 28, 2006 the Office medical consultant, Dr. Ira Rothfeld, a Board-certified otolaryngologist, reviewed the statement of accepted facts and the audiograms and calculated appellant’s hearing loss. He found that July 9, 2004 was the date of maximum medical improvement. Based on the data from the 2004 audiogram and the procedures in the A.M.A., *Guides*, Dr. Rothfeld found 0 percent hearing loss in the right ear, 11.25 percent hearing loss in the left ear and binaural hearing loss of 1.88 percent. He opined that, based on his review of the record, appellant’s hearing loss was related to his employment. Dr. Rothfeld noted the 2004

audiogram as showing losses of 15, 10, 10 and 15¹ in the right ear and 20, 20, 25 and 65 in the left ear for frequencies of 500, 1,000, 2,000 and 3,000 cps.

By decision dated June 7, 2006, the Office granted appellant a schedule award for an 11.25 percent monaural, left ear, hearing loss for 5.85 weeks of compensation for the period July 9 to August 18, 2004.²

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss is to be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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

¹ The Board notes that his number appears to be a typo as the last 15 decibels should read 55.

² Although the June 7, 2006 award of compensation granted appellant a schedule award for an 11.25 percent monaural, right ear, hearing loss, based on Dr. Rothfeld's computations, this should be for the left ear.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ A.M.A., *Guides* 226-51 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

amount of the binaural hearing loss.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

Although Mr. Kerr, a physician's assistant, interpreted the July 9, 2004 audiogram, physicians' assistants are not physicians under the Act and their opinions have no probative medical value.¹² The Office properly referred the record to the Office medical consultant, Dr. Rothfeld, for his opinion and application of the Office's protocols for computing the percentage of hearing loss.

In reviewing appellant's July 9, 2004 audiogram, Dr. Rothfeld noted that the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear reveal decibel losses of 15, 10, 10 and 55, respectively, for a total of 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 is reduced by the "fence" of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, results in a 0 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 cps revealed decibel losses of 20, 20, 25 and 65, respectively, for a total of 130 decibels. When the above-noted formula is utilized, the result is an 11.25 percent monaural hearing loss for the left ear. Consequently, the evidence of record does not establish that appellant has greater than a 0 percent right ear loss and an 11.25 percent left ear loss.

Under the Act, the maximum award for monaural hearing loss is 52 weeks of compensation.¹³ The 11.25 percent loss of hearing in the left ear entitled appellant to an 11.25 percent of 52 weeks or 5.85 weeks of compensation. The Office correctly determined appellant's schedule award to be 5.85 weeks of pay. He is entitled to no more under the Act.

CONCLUSION

Appellant has not demonstrated that he has more hearing loss than 11.25 percent in his left ear, for which he received a schedule award.

¹⁰ *Id.*

¹¹ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹² 5 U.S.C. § 8101(2); *see Ricky S. Storms*, 52 ECAB 349 (2001).

¹³ 5 U.S.C. § 8107(c)(13)(A).

ORDER

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

Issued: June 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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