

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

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**M.M., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
Muscle Shoals, AL, Employer**

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**Docket No. 08-416  
Issued: May 21, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 21, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 13, 2007 decision denying his claim for a schedule award for an employment-related loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he had a ratable hearing loss entitling him to a schedule award.

**FACTUAL HISTORY**

On March 14, 2006 appellant, then 60 years old, filed an occupational disease claim alleging that he sustained a hearing loss due to noise exposure during his federal employment. From July 1979 to September 1984, appellant was employed by the public safety office at the Pickwick Lock Construction Plant where he was exposed to loud noise from small arms fire, compressors, pumps and construction explosions. Starting in September 1984, appellant worked

for the employing establishment as a police officer and was exposed to noise from small arms fire, compressors and pumps. Appellant specifically noted that, as a result of this noise exposure, he was unable to hear some speech sounds in both ears and had moderate loss of high frequency sounds in both ears. In support of his claim, he submitted audiograms conducted for the employing establishment from June 25, 1979 through July 29, 2002.

On September 20, 2006 the Office referred appellant, along with a statement of accepted facts, to Dr. Benjamin Light, a Board-certified otolaryngologist, for a second opinion examination to determine whether appellant had a hearing loss due to noise exposure during his federal employment. In a report dated October 11, 2006, Dr. Light diagnosed appellant with moderate high frequency sensorineural hearing loss due to noise exposure in his federal employment. An October 11, 2006 audiogram conducted on Dr. Light's behalf showed appellant's decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The audiogram reflected the following decibel losses: 10, 15, 15 and 30 for the right ear and 10, 20, 15 and 30 for the left ear.

By letter dated November 27, 2006, the Office asked the Office medical adviser to review Dr. Light's report and determine appellant's hearing loss. In a hearing loss medical opinion of the same date, the Office medical adviser applied Dr. Light's audiometric readings to the hearing loss computation methods set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> edition) (A.M.A., *Guides*) and determined that appellant had zero percent monaural hearing loss in the right ear and a zero percent monaural hearing loss in the left ear. The medical adviser concluded that appellant had no ratable loss of hearing.

On March 21, 2007 appellant filed a claim for a schedule award.

By decision dated April 13, 2007, the Office denied appellant's claim for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> 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 shall 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.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (2007).

<sup>3</sup> *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>5</sup> Then the fence of 25 decibels is deducted because, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

### ANALYSIS

The Office referred appellant to Dr. Light, a Board-certified otolaryngologist, for a complete and current evaluation. Dr. Light concluded on October 11, 2006 that appellant sustained an employment-related loss of hearing.

The Office medical adviser applied the Office's standard procedures, detailed above, to the October 11, 2006 audiogram performed on Dr. Light's behalf. Appellant's October 11, 2006 audiogram tested decibel losses at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 10, 15, 15 and 30 respectively, for the right ear. The total decibel loss in the right ear is 70 decibels. When divided by 4, the result is an average hearing loss of 17.5 decibels. The average loss of 17.5 decibels is reduced by the fence of 25 decibels to equal 0 which when multiplied by the established factor of 1.5, resulted in 0 percent impairment for the right ear.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 20, 15 and 30, respectively, which resulted in a total loss of 75 decibels. When divided by 4, the result is an average hearing loss of 18.75 decibels. The average loss of 18.75 decibels is reduced by the fence of 25 decibels to equal 0 which when multiplied by the established factor of 1.5 resulted in 0 percent impairment to the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Light's October 11, 2006 report and audiogram. The result is that appellant does not have a ratable hearing loss for schedule award purposes. Appellant's contention that he has a ratable hearing loss, especially in the left ear, has not been established by

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<sup>4</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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

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

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

medical evidence. Accordingly, appellant has not established that he is entitled to a schedule award for hearing loss.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he had a ratable hearing loss entitling him to a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 13, 2007 is affirmed.

Issued: May 21, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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