

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

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D.D., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**IMMIGRATION & CUSTOMS** )  
**ENFORCEMENT, SIGNATURE FLIGHT** )  
**SUPPORT, Indianapolis, IN, Employer** )

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**Docket No. 09-326**  
**Issued: July 23, 2009**

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On November 17, 2008 appellant filed a timely appeal from September 18 and October 15, 2008 merit decisions of the Office of Workers' Compensation Programs granting him a schedule award for hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award.

**ISSUE**

The issue is whether the evidence of record established that appellant sustained greater than a five percent binaural hearing loss in the performance of duty.

**FACTUAL HISTORY**

On January 23, 2008 appellant, a 54-year-old U.S. Customs special agent/criminal investigator, filed an occupational disease claim (Form CA-2) for hearing loss. He alleged that he first recognized his hearing loss and its relationship to his federal employment in June 1992.

Appellant attributed his hearing loss to exposure to loud noise produced by jet engines at the Indianapolis airport as well as firearms at the shooting range where he performed quarterly firearm proficiency tests and practice sessions.

Appellant submitted an August 23, 1989 audiogram, signed by Dr. C.H. Rushmore, which reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and showed the following decibel losses: 5, 5, 5 and 20 in the right ear and 5, 5, 10 and 10 in the left ear.

By letter dated February 6, 2008, the Office notified appellant that the evidence he submitted in support of his claim was insufficient to establish entitlement to benefits under the Federal Employees' Compensation Act.

The Office referred appellant, together with a statement of accepted facts, to Dr. William R. Pugh, a Board-certified otolaryngologist, for a second opinion evaluation. By report dated May 6, 2008, Dr. Pugh reported that an audiogram conducted May 6, 2008 reflected testing at 500, 1,000, 2,000 and 3,000 cps levels and showed the following decibel losses: 20, 25, 30 and 55 in the right ear and 20, 25, 25 and 40 in the left ear. He noted that the May 6, 2008 audiogram revealed mild to moderate sensorineural hearing loss. Dr. Pugh opined that appellant's hearing loss was due to workplace exposure.

By decision dated May 20, 2008, the Office accepted the condition.

Appellant submitted a claim (Form CA-7), dated May 28, 2008 for a schedule award.

By memorandum dated June 3, 2008, the Office requested the district medical adviser review appellant's file and, for purposes of the schedule award, determine the percentage of impairment for bilateral sensorineural hearing loss, the need for hearing aids as well as the date of maximum improvement.

By report dated July 12, 2008, the district medical adviser found that appellant had 11.25 percent monaural hearing loss in the right ear and 3.75 percent in the left ear, producing a 5 percent binaural hearing loss. The district medical adviser concluded that the date of maximum improvement was May 6, 2008 and authorized hearing aids.

By decision dated September 18, 2008, the Office granted appellant a schedule award for his five percent binaural hearing loss. By separate decision dated October 15, 2008, the Office amended its September 18, 2008 decision, amending the rate of compensation from 66 2/3 to 75 percent because appellant produced evidence demonstrating that his son was a dependent.

### **LEGAL PRECEDENT**

Section 8107 of the Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>1</sup> The Act,

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<sup>1</sup> The Act provides that, for complete or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks compensation. 5 U.S.C. § 8107(c)(13) (2000).

however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</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>4</sup> 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.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>7</sup>

### ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the May 6, 2008 audiogram obtained by Dr. Pugh. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses in the right ear of 20, 25, 30 and 55 respectively. These totaled 130 decibels which, when divided by 4, obtained an average hearing loss of 32.5 decibels. The average of 32.5 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 7.5 decibels, which, when multiplied by the established factor of 1.5 produces an 11.25 percent hearing loss in the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed hearing losses in the left ear of 20, 25, 25 and 40 respectively. These totaled 110 decibels, which, when divided by 4, obtains an average hearing loss of 27.5 decibels. The average of 27.5 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 2.5 decibels, which, when multiplied by the established factor of 1.5 produces a 3.75 percent hearing loss in the left ear.

The district medical adviser then calculated appellant's binaural hearing loss. The 3.75 percent hearing loss for the left ear, when multiplied by 5, yielded a product of 18.75. The 18.75

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<sup>2</sup> 20 C.F.R. § 10.404 (2006).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<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.*

was then added to the 11.25 percent hearing loss for the right ear to obtain a total of 30. The 30 was then divided by 6, in order to calculate a binaural hearing loss of five percent. The evidence of record establishes that appellant has a five percent binaural hearing loss.

Therefore, the Office properly calculated appellant's schedule award entitlement based upon the medical evidence of record.

**CONCLUSION**

The Board finds that appellant has not established that he sustained greater than a five percent binaural hearing loss in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 15 and September 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 23, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board