

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

L.C., Appellant

and

TENNESSEE VALLEY AUTHORITY,
Muscle Shoals, AL, Employer

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**Docket No. 07-968
Issued: November 6, 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 February 26, 2007 appellant filed a timely appeal from the February 5, 2007 Office of Workers' Compensation Programs' decision denying modification of the its December 18, 2006 decision which found that his hearing loss was not severe enough to be ratable. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this schedule award claim.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he is entitled to a schedule award for his hearing loss.

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a September 18, 2006 decision, the Board found that appellant's claim for hearing loss was timely filed and reversed

¹ Docket No. 06-1190 (issued September 18, 2006).

the Office's March 31 and January 11, 2006 decisions. The facts and the history contained in the prior appeal are incorporated herein by reference.

On September 25, 2006 the Office referred appellant for examination to Dr. George Godwin, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. On December 7, 2006 Dr. Godwin described appellant's history of injury and treatment and performed an otologic evaluation. Audiometric testing was conducted on December 4, 2006. The audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 25, 30, 30 and 45 decibels; left ear 20, 25, 30 and 45 decibels. Dr. Godwin determined that at the beginning of his federal employment appellant's hearing was normal. He also noted that appellant sustained noise-induced high frequency sensorineural hearing loss and presbycusis and recommended bilateral amplification.

On December 8, 2006 an Office medical adviser reviewed Dr. Godwin's December 7, 2006 report and audiometric test of December 4, 2006 to determine if appellant's bilateral sensorineural hearing loss was ratable for schedule award purposes. The Office medical adviser concluded that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*), appellant had no permanent impairment due to his accepted hearing loss. The Office medical adviser concurred with Dr. Godwin that appellant's hearing loss was not severe enough to be ratable for schedule award purposes.

In a decision dated December 18, 2006, the Office accepted appellant's claim for bilateral sensorineural hearing loss. In a separate decision also dated December 18, 2006, the Office determined that appellant's hearing loss was not severe enough to be ratable for purposes of a schedule award.

On January 12, 2007 appellant requested reconsideration. In a January 12, 2007 report, Dr. F. Allen Long, a Board-certified otolaryngologist, noted that appellant had a long history of progressive hearing loss in both ears and a history of noise exposure in the military and in his work. He indicated that appellant had a normal tympanic membrane and his audiogram revealed a high frequency sensorineural hearing loss in each ear. Dr. Long also enclosed a January 8, 2007 audiogram. The audiogram contained testing for the right and left ears at the frequency levels of 500, 1,000, 2,000 and 3,000 cycle per second (cps). On January 23, 2007 the Office requested that the Office medical adviser review Dr. Long's report and audiogram and determine whether the report demonstrated a ratable hearing loss.

In a January 24, 2007 report, the Office medical adviser opined that Dr. Long's report and audiogram were valid but did not establish a ratable hearing loss.

By decision dated February 5, 2007, the Office denied modification of the December 18, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ sets 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 regulations as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board notes that on December 18, 2006 the Office accepted appellant's claim for bilateral sensorineural hearing loss. The Office also found that appellant's hearing loss was not considered severe enough to be ratable. Dr. Godwin's audiologic testing of December 4, 2006 which was comprised of testing for the right ear at the frequency levels of 500, 1,000, 2,000 and

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

3,000 cps revealed decibel losses of 25, 30, 30 and 45 respectively. The Board notes that for the right ear, these decibel losses equal a total of 130 decibels which when divided by 4 results in to an average hearing loss of 32.5 decibels. This average loss reduced by 25 decibels (25 decibels being discounted as discussed above) is equal to 7.5. The Board notes that this figure, when multiplied by 1.5, results in 11.25 percent monaural loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 25, 30 and 45 respectively. These decibel losses total 120 decibels and when divided by 4 result in an average hearing loss of 30 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 5 decibels for the left ear. This value multiplied by 1.5 results in a 7.5 monaural impairment. The 7.5 value for the left ear (the lesser value) multiplied by 5 would equate to 37.5 and would be added to 11.25 and result in 48.75, which would be divided by 6 and totals an 8 percent binaural hearing loss. However, the Office medical adviser concluded that appellant did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*. The Board finds that the audiometric testing obtained by Dr. Godwin does not support that the extent of hearing loss is not ratable. The findings from Dr. Godwin's report show an eight percent binaural hearing loss.

Dr. Long provided a January 8, 2007 audiogram, which the Office medical adviser opined was valid but which did not show a ratable hearing loss. However, he did not provide test results at the frequency of 3,000 cps, as required by the A.M.A., *Guides*.¹¹ It is unclear how the Office medical adviser concluded that this report was valid and did not show a ratable hearing loss.

For these reasons, the case will be remanded to the Office on whether appellant is entitled to a schedule award for his accepted hearing loss.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹¹ See *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2007 is set aside. The case is remanded for further action in conformance with this decision.

Issued: November 6, 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