

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILFORD R. CRAFT and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Pensacola, Fla.

*Docket No. 97-1323; Submitted on the Record;
Issued February 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 14 percent binaural loss of hearing for which he received a schedule award.

In a decision dated December 9, 1996, the Office of Workers' Compensation Programs awarded appellant a schedule award for a 14 percent binaural hearing loss. This determination was based upon the calculation of the Office's medical adviser which in turn, was made on the basis of an August 26, 1996 audiogram and a report submitted by Dr. Stephen J. Toner, an Office referral physician and a Board-certified otolaryngologist. The Office awarded compensation for a period of 28 weeks, beginning on August 26, 1996 and continuing through March 9, 1997.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a 14 percent binaural hearing loss for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ 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. The Act, however, does not specify the manner by 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.² 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.³

¹ 5 U.S.C. § 8107.

² *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Utilizing the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged, and a “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 sounds under everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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 the binaural hearing loss.⁵ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

In the present case, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 15, 25, 40 and 50, respectively, for a total of 130 decibels. When this figure is divided by 4, the result is an average hearing loss of 32.5 decibels. The average loss of 32.5 is reduced by 25 decibels to equal 7.5, which when multiplied by the established factor of 1.5, results in an 11.25 percent monaural hearing loss for the right ear.⁷ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 35, 65 and 60 decibels respectively, for a total of 180 decibels. Utilizing the same above-noted formula results in a 30 percent monaural hearing loss for the left ear.⁸ The 11.25 percent hearing loss for the right ear (the ear with the lesser loss) is multiplied by 5, to obtain the total of 56.25. The 56.25 is then added to the 30 percent hearing loss for the left ear (the ear with the greater loss) to obtain the total of 86.25. The 86.25 is then divided by the sum of 6, in order to calculate a binaural loss of hearing of 14.375 percent, which the Office then rounded down to 14 percent.⁹

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.¹⁰ With respect to the schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent loss of hearing in both ears, an employee shall receive 200 weeks of compensation.¹¹ In the instant case, appellant does not have a total, or 100 percent binaural

⁴ See A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247 (1974).

⁵ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ *Danniel C. Goings*, *supra* note 2.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (October 1990).

⁸ *Id.*

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(13)(b).

hearing loss, but rather a 14 percent binaural hearing loss, which the Office has determined was employment related. As appellant has only a 14 percent loss of use of both ears, he is entitled to 14 percent of the 200 weeks of compensation, which is 28 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 9, 1996 is affirmed.

Dated, Washington, D.C.
February 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member