

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY J. STICKNEY and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Fargo, ND

*Docket No. 99-1659; Submitted on the Record;
Issued August 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly calculated appellant's entitlement to a schedule award for a seven percent binaural hearing loss.

The Board has duly reviewed the case record in the present appeal and finds that appellant has a 43 percent monaural hearing loss of his left ear.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

To evaluate industrial hearing loss pursuant to the A.M.A., *Guides*,³ using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁴ 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.⁵ The remaining amount is multiplied by a factor of

¹ 5 U.S.C. § 8107(a).

² *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

³ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁴ A.M.A., *Guides*, 224-25 (4th ed. 1993).

⁵ *Id.*

1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

In the present case, the Office accepted that appellant sustained an employment-related binaural hearing loss. By decision dated April 7, 1999, the Office granted appellant a schedule award for a seven percent binaural hearing loss. The award ran for 3.64 weeks from October 5, 1998 to October 30, 1998.

On January 23, 1999 an Office medical consultant reviewed the otologic and audiometric testing performed on October 5, 1998 by Dr. Stephen D. Asp, a Board-certified otolaryngologist, and applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 30, 40, 75 and 70 respectively. These decibel losses were totaled at 215 decibels and were divided by 4 to obtain the average hearing loss of 53.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 28.75, which was multiplied by the established factor of 1.5 to compute a 43.125 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 10, 20 and 65 respectively. These decibel losses were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss of 25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the right ear, 0 percent, was multiplied by the established factor of 5, added to the 43.125 percent loss in the left ear and this sum was divided by the established factor of 6 to obtain 7.2 percent, which, when rounded to a whole figure, equals a 7 percent binaural hearing loss.⁹

The medical evidence reveals that, after applying the relevant standards of the A.M.A., *Guides* and rounding to whole figures, appellant has a 43 percent monaural hearing loss in his left ear, a 0 percent monaural hearing loss in his right ear and a 7 percent binaural hearing loss.

⁶ *Id.*

⁷ *Id.*

⁸ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

⁹ The Office medical consultant properly rounded his results only at the end of the calculation process; *see* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapters 3.700.3(b), 4(b)(2) (October 1990).

The schedule award provision of the Act, specifies the number of weeks of compensation to be awarded for loss of hearing.

For total loss of hearing in one ear, the Act provides for 52 weeks of compensation, for total loss of hearing in both ears, the Act provides for 200 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate, so a 7 percent binaural hearing loss equals 14 weeks of compensation or 7 percent of 200 weeks.¹⁰

The Board notes, however, that FECA Program Memorandum No. 181 (issued November 26, 1974) provides:

“On occasion, the allowances for loss of hearing in each ear, if computed separately, may be greater than the combined value of bilateral hearing loss.”

In such cases, the employee should be given the benefit of the more favorable allowance, as prescribed in the awards for hands and feet in FECA Program Memorandum No. 134. Thus, in such cases, the claimant should be compensated in accordance with the scheduled allowances for the sum of loss of hearing in each ear.¹¹

In the present case, the Office medical adviser did not apply FECA Program Memorandum No. 181 to the audiometric results reported by Dr. Asp. Audiometric testing reveals that appellant has a 43 percent monaural hearing loss in his left ear and a 0 percent monaural hearing loss in his right ear. Calculated separately appellant’s schedule award using the monaural hearing loss figures would equal 22 weeks of compensation (43 percent multiplied by 52 weeks plus 0 percent multiplied by 52 weeks) as opposed to 14 weeks of compensation for a 7 percent binaural hearing loss. The Board will affirm the decision as modified, to find appellant has a 43 percent monaural loss entitling him to 22 weeks of compensation.

¹⁰ 5 U.S.C. § 8107(c)(13), (c)(19).

¹¹ *Clarence L. Weeks*, 38 ECAB 613, 616-17 (1987); *Sheldon H. Pellow*, 33 ECAB 148, 150 (1981).

The decision of the Office of Workers' Compensation Programs dated April 7, 1999 is affirmed, as modified.

Dated, Washington, D.C.
August 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member