

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of KENNETH FEE and DEPARTMENT OF LABOR,  
MINE SAFETY & HEALTH ADMINISTRATION, Harlan, KY

*Docket No. 00-446; Submitted on the Record;  
Issued April 4, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant had more than a 20 percent binaural hearing loss for which he received a schedule award.

On March 25, 1999 appellant, then a 65-year-old retired coal mine inspector, filed a notice of occupational disease, alleging that he sustained an additional hearing loss causally related to factors of his federal employment. On April 12, 1995 the Office of Workers' Compensation Programs issued appellant a schedule award for a 14 percent binaural hearing loss. The employing establishment submitted appellant's employment history, which indicated that appellant worked as a coal mine inspector from August 28, 1970 to November 9, 1975 and was then promoted to supervisor. Appellant retired on January 2, 1998.

On April 23, 1999 the Office referred appellant, along with a statement of accepted facts, all available noise exposure information and a copy of appellant's medical records and audiograms, to Dr. Richard Smith, a Board-certified otolaryngologist, for audiometric testing and otologic evaluation and a medical opinion on whether appellant sustained additional hearing loss as a result of exposure to hazardous noise in his federal employment.

In a report dated May 18, 1999, Dr. Smith indicated that he had examined appellant on that date and stated:

"It is my impression that this gentlem[a]n's hearing loss is primarily due to his work[-]related exposure as documented in the statement of accepted facts. He is in agreement with the comments made in the statement of accepted facts. I believe that his hearing loss is due to this prior noise exposure but I do not believe that there is any evidence of progression since he left employment in January 1998."

Dr. Smith included a copy of a May 18, 1999 audiogram, which revealed a hearing loss in the right ear at the 500, 1,000, 2,000 and 3,000 cycles per second (cps) frequencies of 15, 20, 45 and 70 decibels, respectively and for the left ear of 10, 20, 70 and 75 decibels.

On September 16, 1999 the Office issued a schedule award for an additional 6 percent for bilateral hearing loss, resulting in a total of 20 percent binaural loss of hearing.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> set forth the numbers of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.<sup>2</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination rests in the sound discretion of the Office.<sup>3</sup> However, as a matter of administrative practice the Board has stated: "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."<sup>4</sup>

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993) hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 cps. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted, since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>5</sup> 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.<sup>6</sup>

The Office medical adviser applied the Office's standard procedures to the May 18, 1999 audiogram performed by Dr. Smith. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 45 and 70, respectively. These decibels were totaled at 150 and were divided by 4 to obtain the average hearing loss at those cycles of 37.50 decibels. The average of 37.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted, as discussed above) to equal 12.50 decibels, which was multiplied by the established factor of 1.5 to compute an 18.75 percent loss of hearing for the right ear.

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>4</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

<sup>5</sup> A.M.A., *Guides* at 224.

<sup>6</sup> *Id*; see also *Danniel C. Goings*, *supra* note 3 at 784.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibels levels of 10, 20, 70 and 75, respectively. These decibels were totaled at 175 and were divided by 4 to obtain the average hearing loss at those cycles of 43.75 decibels. The average of 43.75 decibels was then reduced by 25 decibels to equal 18.75, which was multiplied by the established factor of 1.5 to compute a 28.125 percent loss of hearing for the left ear.

The amount of the right ear (the better ear), 18.75, was multiplied by 5 and added to the amount for the left ear, 28.125, which totaled 121.875. The 121.875 was then divided by 6 to arrive at the percentage of binaural hearing loss. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser properly determined that appellant sustained a 20 percent binaural hearing loss.<sup>7</sup>

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided by Dr. Smith's May 18, 1999 report and the accompanying audiogram. This resulted in a calculation of a 20 percent binaural hearing loss. Therefore, the Office properly concluded that the evidence established that appellant has no more than a 20 percent binaural hearing loss for which he received a schedule award.

On appeal appellant alleges that his schedule award compensation may not have been properly calculated. The Office's April 12, 1995 schedule award granted appellant an award for a 14 percent binaural hearing loss and awarded 28 weeks of pay at the rate of 75 percent of his weekly pay of \$1,267.60. The computation of 75 percent of \$1,267.60 resulted in a weekly compensation rate of \$950.63.

In the September 16, 1999 schedule award notice, however, the Office made a typographical error in reporting appellant's weekly compensation rate, for the 12 additional weeks of compensation. The Office listed appellant's weekly pay rate as \$1,336.38 and the weekly compensation rate as \$1,336.38. The weekly pay rate should have been multiplied by 75 percent to result in a weekly compensation rate of \$1,002.29.

The Board's calculations indicate that appellant should have received schedule award compensation totaling \$38,645.12. The Board is unable to ascertain from this record the total amount of compensation paid to appellant. On return of the case record to the Office, the Office shall verify that appellant has received the entire schedule award.

---

<sup>7</sup> The Board notes that appellant's bilateral hearing loss totaled to 20.31 percent, which was rounded to 20.

The September 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 4, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member