

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAMMY E. MARTIN and TENNESSEE VALLEY AUTHORITY,  
BROWNS FERRY NUCLEAR PLANT, Decatur, AL

*Docket No. 02-524; Submitted on the Record;  
Issued July 18, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 21 percent binaural hearing loss for which he was granted a schedule award.

The Board finds that appellant has no greater than a 21 percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> set 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, however, does not specify the manner in which the percentage loss shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office of Workers' Compensation Programs.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001).<sup>4</sup> Under the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>5</sup> Then the "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 under everyday conditions.<sup>6</sup> The remaining amount is multiplied by a

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> A.M.A., *Guides*, 246-55 (5<sup>th</sup> ed. 2001).

<sup>6</sup> *Id.* at 250.

factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.<sup>8</sup> In addition, the Office's procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.<sup>9</sup> The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA) or state licensure as an audiologist.<sup>10</sup>

In the present case, the Office accepted on October 6, 2000, that appellant, then a 45-year-old sheet metal worker, was entitled to a schedule award for hearing loss. By decision dated August 15, 2001, the Office granted appellant a schedule award for a 21 percent bilateral hearing loss. The award ran for 42 weeks from June 19, 2000 to April 8, 2001.

On September 29, 2000 the Office medical adviser reviewed the otologic and audiological testing performed on June 19, 2000 by Dr. George H. Godwin, III, a Board-certified otolaryngologist, to whom the Office referred appellant, and applied the Office's standardized procedures to the evaluation.<sup>11</sup> Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 40, 40, 35 and 40 respectively. These decibel losses were totaled to 160 decibels and were divided by 4 to obtain the average hearing loss of 40 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 15 which was multiplied by the established factor of 1.5 resulting in a 22.5 percent monaural 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 40, 40, 35 and 40 respectively. These decibel losses were totaled at 155 decibels and were divided by 4 to obtain the average hearing loss of 38.75 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 13.75 which was multiplied by the established factor of 1.5 resulting in a 20.63 percent monaural loss in the right ear. The Office medical adviser then multiplied the 20.63 percent loss in the right ear by 5 (the ear with the lesser loss), added this figure to the greater loss of 22.5 percent and divided the total by 6 to calculate appellant's binaural hearing loss at 21 percent.

The Board finds that the Office medical adviser applied the proper standards to the findings stated, in Dr. Godwin's June 19, 2000 report and the accompanying June 19, 2000 audiometric evaluation that Dr. Godwin reviewed. This resulted in a calculation of 20.54 percent binaural hearing loss, which was rounded up to 21 percent by the Office in granting a schedule award. On appeal appellant contends that the schedule award he received was not

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<sup>7</sup> *Id.* at 250.

<sup>8</sup> *Id.* at 250.

<sup>9</sup> *Danniel C. Goings, supra* note 3; *Richard Beggs, supra* note 3.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

<sup>11</sup> *Donald A. Larson*, 41 ECAB 947, 951 (1990).

adequate compensation for his binaural hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>12</sup> The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.<sup>13</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>14</sup> so appellant's award of compensation for a 21 percent binaural hearing loss entitled appellant to 21 percent of 200 weeks of compensation or 42 weeks of compensation. The record indicates that appellant received this amount of compensation. Appellant has been fully compensated for a 21 percent binaural hearing loss and he is not entitled to a greater award of compensation.

Appellant has not provided any probative medical evidence that he has greater than a 21 percent impairment of both ears. The decision of the Office of Workers' Compensation Programs dated August 15, 2001 is hereby affirmed.

Dated, Washington, DC  
July 18, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>12</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.404.

<sup>13</sup> 5 U.S.C. § 8107(c)(13)(b).

<sup>14</sup> 5 U.S.C. § 8107(c)(19).