

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHNNIE CRUTCHFIELD and DEPARTMENT OF THE NAVY,  
SEA SYSTEMS COMMAND, Long Beach, Calif.

*Docket No. 96-2201; Submitted on the Record;  
Issued June 2, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

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

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.<sup>1</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 is a matter which rests in the sound discretion of the Office of Workers' Compensation Programs.<sup>2</sup> However, as a matter of administrative practice the Board has stated, "For consistent results and to insure 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>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* (4<sup>th</sup> ed. 1993).<sup>4</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

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

<sup>4</sup> *George L. Cooper*, 40 ECAB 296, 302 (1988).

each frequency are added up and averaged.<sup>5</sup> 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.<sup>6</sup> The remaining amount is multiplied by a 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 the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

On April 5, 1996 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Gregory E. Washington, a Board-certified otolaryngologist, on November 13, 1995 and applied the Office’s standardized procedures to this evaluation.<sup>10</sup> 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 15, 30, 35 and 40 respectively. These decibel losses were totaled at 120 decibels and were divided by 4 to obtain the average hearing loss of 30 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 5 which was multiplied by the established factor of 1.5 to compute a 7.5 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 15, 30, 30 and 40 respectively. These decibel losses were totaled at 115 decibels and were divided by 4 to obtain the average hearing loss of 28.75 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 3.75 which was multiplied by the established factor of 1.5 to compute a 5.6 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the right ear, 5.6 percent, was multiplied by the established factor of 5, added to the 7.5 percent loss in the left ear and this sum was divided by the established factor of 6 to calculate a 6 percent binaural hearing loss. The Board notes that the Office medical adviser properly determined, based on the relevant medical evidence and rating standards, that appellant sustained a six percent binaural hearing loss. The record contains audiograms obtained by employing establishment audiologists between 1993 and 1995, but these audiograms were not certified by a physician as being accurate and therefore are of limited probative value. If an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss.<sup>11</sup>

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<sup>5</sup> A.M.A., *Guides*, 224-25 (4th ed. 1993).

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

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

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

<sup>9</sup> *Donald A. Larson*, 41 ECAB 947, 951 (1990).

<sup>10</sup> Dr. Washington initially indicated that appellant’s hearing loss was not employment related, but he later concluded the loss was, at least in part, due to exposure to hazardous noise at work. The Office accepted that appellant sustained an employment-related binaural hearing loss.

<sup>11</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

On appeal, appellant contends that the schedule award he received was not 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 6 percent binaural hearing loss entitled appellant to 6 percent of 200 weeks of compensation, or 12 weeks of compensation. The record indicates that appellant already received this amount of compensation by award of compensation dated April 25, 1996.<sup>15</sup> Because appellant has been fully compensated for the percent binaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.

The decision of the Office of Workers' Compensation Programs dated April 25, 1996 is affirmed.

Dated, Washington, D.C.  
June 2, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.304.

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

<sup>14</sup> 5 U.S.C. § 8107(c)(19).

<sup>15</sup> The award ran for 12 weeks from November 13, 1995 to February 4, 1996.