

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM R. KIRKLAND and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 97-227; Submitted on the Record;  
Issued October 23, 1998*

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DECISION and ORDER

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

The issue is whether appellant is entitled to a schedule award for a binaural hearing loss.

On April 12, 1995 appellant, then a 52-year-old planner and estimator, filed a claim for hearing loss which he attributed to working while exposed to loud noise at the employing establishment. He noted that he had worked at the employing establishment as a bagboy, driver, warehouseman, mechanic, welder, toolroom attendant, and planner and estimator. In an April 3, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim for a schedule award on the grounds that his hearing loss was not severe enough to be considered ratable for a schedule award.

The Board finds that appellant does not have a ratable hearing loss that would entitle him to a schedule award.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> specifies 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 used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>2</sup> 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>3</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The

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<sup>1</sup> 5 U.S.C. § 8107(c).

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

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

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. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by 5 and added to the amount from the worse ear. The entire amount is then divided by 6 to arrive at the percentage of binaural hearing loss<sup>4</sup>. The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss for schedule award purposes.<sup>5</sup>

The Office medical adviser correctly applied the Office’s standard procedures to the audiogram obtained by Dr. Robert Marwick, a Board-certified otolaryngologist. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 20, 25, and 25 respectively for a total of 85 decibels. These losses were divided by 4 for an average hearing loss of 21.25 decibels. The average was reduced by 25 decibels (the first 25 decibels are deducted, as explained above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 10, 20, 30, and 40 decibels respectively for a total of 100 decibels. These losses were divided by 4 for an average hearing loss of 25 decibels. The average was reduced by 25 decibels (as explained above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the left ear. The medical evidence of record therefore shows that appellant’s hearing loss is not sufficiently severe under the Office’s standards to entitle him to a schedule award.

The decision of the Office of Workers’ Compensation Programs, dated April 3, 1996, is hereby affirmed.

Dated, Washington, D.C.  
October 23, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> p. 166 (3d ed. 1987).

<sup>5</sup> *Goings*, *supra* note 2.