

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. HOTSENPILLER and DEPARTMENT OF THE NAVY,
U.S. MARINE CORPS, Camp Lejeune, NC

*Docket No. 99-1953; Submitted on the Record;
Issued August 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has a ratable hearing loss for which he would receive a schedule award.

On May 3, 1998 appellant, then a 63-year-old telecommunications mechanic supervisor, filed a claim for a hearing loss. An official at the employing establishment indicated that telecommunication mechanics use various pieces of equipment which might have noise levels above 84 decibels that would be used for short periods of time.

In an April 9, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim for a hearing loss on the grounds that his hearing loss was not sufficiently severe to be considered ratable for a schedule award.

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

Section 8107 of the Federal Employees' Compensation Act¹ 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.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice

¹ 5 U.S.C. § 8107(c).

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

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 (cps). The 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.⁴ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss for schedule award purposes.⁵

The Office medical adviser correctly applied the Office’s standard procedures to the audiogram obtained by Dr. Richard Dwight Grady, a Board-certified otolaryngologist. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 20, 15 and 35 respectively for a total of 95 decibels. These losses were divided by 4 for an average hearing loss of 23.75 decibels. The average was reduced by 25 decibels (the first 25 decibels are deducted, as explain 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 15, 20, 20 and 35 decibels respectively for a total of 90 decibels. These losses were divided by 4 for an average hearing loss of decibels 22.50. 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. Under the formula for determining binaural hearing loss, the Office medical adviser concluded that appellant had no ratable hearing loss. The medical evidence of record therefore shows that, under the Office’s guidelines for calculating schedule awards for hearing loss, appellant is not entitled to a schedule award.

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

⁴ Page 166 (3^d ed. 1987).

⁵ *Goings*, *supra* note 2.

The decision of the Office of Workers' Compensation Programs, dated April 8, 1999, is hereby affirmed.

Dated, Washington, D.C.
August 28, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member