

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. GONZALES and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Toole, UT

*Docket No. 98-1597; Submitted on the Record;
Issued February 17, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained more than a six percent binaural hearing loss for which he was issued a schedule award.

On April 11, 1995 appellant, then a 44-year-old general equipment repairer, filed a Form CA-2, notice of occupational disease and claim for compensation, alleging that he sustained bilateral hearing loss from exposure to hazardous noise in the performance of duty.

The employing establishment provided copies of appellant's personnel file including his signed agreement to wear ear protection, periodic employment audiograms dating from January 7, 1972 through July 18, 1994,¹ and a report of noise exposure measurements.

By letter dated April 3, 1996, the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts, to Dr. Leland Johnson for a complete audiologic and otologic evaluation.

In conjunction with Dr. Johnson's evaluation, an audiogram dated May 21, 1996 indicated testing at 500, 1,000, 2,000 and 3,000 hertz and revealed hearing loss levels of 15, 20, 30 and 60 decibels in the right ear and 5, 10, 30 and 70 decibels in the left ear.

In his May 21, 1996 report, Dr. Johnson noted that appellant complained of bilateral tinnitus for the past two years and had difficulty understanding conversation. He reviewed a preemployment audiogram dated January 7, 1972, stating that it showed a symmetrical bilateral high frequency sensorineural hearing loss. Comparing the January 7, 1972 audiogram with the May 21, 1996 audiogram, the doctor indicated that there was a progression of the sensorineural hearing loss in excess of that predicted on the basis of "presbycusis in view of [appellant's] age", but he also noted that the majority of appellant's hearing loss occurred prior to his employment. Dr. Johnson acknowledged that appellant's workplace noise was of sufficient intensity and

¹ These audiograms were prepared by an audiologist but were not certified by a physician.

duration to produce a noise-induced hearing loss. He diagnosed bilateral high frequency sensorineural hearing loss consistent with noise-induced hearing loss.

On May 22, 1996 the Office accepted the claim for bilateral hearing loss.

In a report dated June 11, 1996, an Office medical adviser calculated appellant's percentage of hearing loss as 9.375 percent monaural loss in the left ear, 5.625 percent monaural loss in the right ear and a total of 6.25 percent binaural loss.

On February 11, 1998 appellant filed a Form CA-7 claim for a schedule award.

In a decision dated March 3, 1998, the Office issued a schedule award for a six percent loss of binaural hearing for the period May 21 to August 12, 1996.

The Board finds that appellant has sustained no more than a six percent binaural hearing loss for which he was issued a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.² 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 determinations is a matter which rests in the sound discretion of the Office.³ However, as a matter of administrative practice and to insure consistent results to all claimants, the Office has adopted and the Board has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁴

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second. 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. 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.⁵ The Board has concurred in the Office's use of this new standard for evaluating hearing losses for schedule award purposes.⁶

In the instant case, the Office medical adviser properly applied the Office's standardized procedures to the May 21, 1996 audiogram. The losses at the frequencies of 500, 1,000, 2,000

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King* 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁵ See A.M.A., *Guides* 224 (fourth edition 1993); FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ *Daniel C. Goings*, *supra* note 3.

and 3,000 cycles per second were added up and averaged, and the “fence” of 25 decibels was deducted. The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For hearing levels recorded in the right ear of 15, 20, 30 and 60 decibels there was reported a 9.375 percent monaural loss. For hearing levels recorded in the left ear of 5, 10, 30 and 70 decibels there was reported a 5.625 percent monaural loss. The Office medical adviser next multiplied the monaural loss for the left ear by five and added that figure with the monaural loss for the right ear. The sum was then correctly divided by 6 to arrive at 6.25 percent binaural loss and rounded off to 6 percent binaural hearing loss. Thus, the Board concludes that the Office properly awarded appellant a six percent bilateral hearing loss causally related to exposure to hazardous noise in his federal employment.

The schedule award provisions of the Act set forth the number of weeks compensation to be paid for permanent loss of use of the member listed in the schedule. Under 5 U.S.C. § 8107, a claimant is entitled to basic compensation for complete loss of hearing in both ears for 200 weeks at the rate of $66 \frac{2}{3}$ percent of his monthly pay. As appellant does not suffer from complete hearing loss in both ears, the total available weeks of compensation (200) is multiplied by his percentage (.06) of bilateral hearing loss ($200 \times .06 = 12$) to arrive at 12 weeks of compensation.⁷

The decision of the Office of Workers’ Compensation Programs dated March 3, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 17, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See 5 U.S.C. § 8107(c)(13).