

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEM WILLIS, JR. and NAVAL AVIATION DEPOT,
NADEP PESD, Cherry Point, NC

*Docket No. 02-916; Submitted on the Record;
Issued September 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has greater than a 13 percent binaural loss, for which he received a schedule award.

On September 18, 2001 appellant, then a 62-year-old painter, filed an occupational claim alleging that he sustained a hearing loss. Appellant retired on December 31, 2001.

By decision dated February 11, 2002, the Office of Workers, Compensation Programs issued a schedule award for a 13 percent binaural hearing loss.

The Board has duly reviewed the case record and concludes that appellant did not establish that he has greater than a 13 percent bilateral hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule 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 does not, however, 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 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

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

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ 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.⁶ The remaining amount is multiplied by a factor of 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 5, then added to the greater loss and the total is divided by 6, to arrive at the amount of the binaural loss.⁷ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁸

In a report dated January 9, 2002, the Office medical adviser reviewed the most recent audiogram of record dated December 18, 2001. He determined that on the December 18, 2001 audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second of the right ear, 10, 15, 50 and 55 respectively, totaled 130 which divided by 4 yielded the average hearing loss at those frequencies of 32.50 decibels. The Office medical adviser reduced the average 32.50 decibels by the 25 decibel “fence” to equal 7.5. He then multiplied 7.5 by the established factor of 1.5 to obtain a monaural loss in the left ear of 11.25 percent.

The Office medical adviser totaled the decibel losses at the above-mentioned frequencies for the left ear, 15, 20, 60 and 70 respectively, at 165 which he divided by 4 to obtain the average hearing loss at those frequencies of 41.25 decibels. He reduced 41.25 by the 25 decibel “fence” to equal 16.25 which he then multiplied by 1.5 to obtain a monaural loss for the left ear of 24.38 percent. The Office medical adviser then multiplied the 11.25 percent loss in the right ear by 5, added it to the 24.38 percent loss in the left ear and divided the sum by 6 to calculate appellant’s binaural loss at 13.44 percent, which he rounded out to a 13 percent binaural loss. The Office medical adviser properly determined that appellant’s binaural hearing loss was 13 percent. Appellant has not submitted evidence establishing that his hearing loss was greater than that amount.

³ *Marco A. Padilla*, 51 ECAB ____ (Docket No. 98-1296, issued December 6, 1969); *Arthur E. Anderson*, *supra* note 2 at 697.

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002).

The February 11, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 9, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member