

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS S. VASQUEZ and DEPARTMENT OF THE NAVY
NAVAL CONSTRUCTION BATTALION CENTER, Port Hueneme, CA

*Docket No. 02-1026; Submitted on the Record;
Issued September 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he has more than a seven percent binaural hearing loss for which he received a schedule award.

The Board finds that appellant has no more than a seven percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage loss 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.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*, (5th ed. 2001).⁴ Under 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 since, 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ 20 C.F.R. § 10.404 (1999).

⁵ A.M.A., *Guides*, 246-55 (5th ed. 2001).

⁶ *Id.* at 250.

factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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 binaural hearing loss.⁸ In addition, the Office's procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.⁹ The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association, or state licensure as an audiologist.¹⁰

On March 16, 2000 appellant, then a 45-year-old equipment specialist, filed a claim alleging that he sustained an employment-related hearing loss. On September 19, 2001 the Office accepted that appellant sustained a bilateral sensorineural hearing loss due to employment factors. By decision dated January 25, 2002, the Office granted appellant a schedule award for a seven percent binaural hearing loss. The award ran for 14 weeks from August 27 to December 2, 2001.

On December 23, 2001 the Office medical adviser reviewed the otologic and audiological testing performed on August 27, 2001 by Dr. Arthur Peters, a Board-certified otolaryngologist and applied the Office's standardized procedures to this evaluation.¹¹ 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 45, 30, 25 and 35 respectively. These decibel losses were totaled at 135 decibels and were divided by 4 to obtain the average hearing loss of 33.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 8.75, which was multiplied by the established factor of 1.5 to compute a 13.1 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 30, 25, 30 and 30 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 13.1 percent loss in the left ear and this sum was divided by the established factor of 6 to calculate a 6.9 percent binaural hearing loss. This figure was properly rounded-up to seven percent¹²

⁷ *Id.* at 250.

⁸ *Id.* at 250.

⁹ *Supra* note 3.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

¹¹ Dr. Peters determined that appellant had an employment-related sensorineural hearing loss.

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provisions of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.¹³ The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.¹⁴ A partial loss of hearing is compensated at a proportionate rate,¹⁵ so appellant's award of compensation for a 7 percent binaural hearing loss entitled appellant to 7 percent of 200 weeks of compensation or 14 weeks of compensation. The record indicates that appellant has already received this amount of compensation. Because appellant has been fully compensated for 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.¹⁶

The January 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 10, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

¹³ 5 U.S.C. § 8107(c) and implementing regulation at 20 C.F.R. § 10.404.

¹⁴ 5 U.S.C. § 8107(c)(13)(b).

¹⁵ 5 U.S.C. § 8107(c)(19).

¹⁶ Dr. David N. Schindler recommended that appellant use hearing aids. Appellant may wish to request authorization from the Office for use of such medical devices.