

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL R. MARTINEAU and DEPARTMENT OF THE NAVY,  
TRIDENT REFIT FACILITY, Kings Bay, GA

*Docket No. 03-50; Submitted on the Record;  
Issued February 27, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has more than a two percent hearing loss of the right ear, for which he received a schedule award.

In a decision dated August 30, 2002, the Office of Workers' Compensation Programs granted appellant a schedule award for a two percent hearing loss of the right ear. The Office based its determination on the March 13, 2002 calculation of its medical adviser, who in turn, relied on the February 25, 2002 audiological evaluation and report submitted by Dr. J. Douglas Green, Jr., a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 1.04 weeks, beginning February 25, 2002 and continuing through March 4, 2002.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a two percent hearing loss of the right ear.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>1</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

Utilizing the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

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.<sup>3</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.<sup>4</sup>

In reviewing appellant's February 25, 2002 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear revealed decibel losses of 15, 15, 25 and 50, respectively, for a total of 105 decibels. When divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 is reduced by 25 decibels to equal 1.25, which when multiplied by the established factor of 1.5, results in a 1.875 percent monaural hearing loss for the right ear.<sup>5</sup> This figure was properly rounded up to two percent.<sup>6</sup> Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 10, 15, 35, and 40 decibels respectively, for a total of 100 decibels. Utilizing the same above-noted formula results in a zero percent monaural hearing loss for the left ear.<sup>7</sup> Consequently, the reliable evidence of record does not establish that appellant has greater than a two percent monaural loss of hearing of the right ear.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.<sup>8</sup> With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent, loss of hearing in one ear an employee shall receive 52 weeks of compensation.<sup>9</sup> In the instant case, appellant does not have a total or 100 percent monaural hearing loss, but rather at most a 2 percent monaural hearing loss, which the Office has determined was employment related. As appellant has a 2 percent loss of use of his left ear, he is entitled to 2 percent of the 52 weeks of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

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<sup>3</sup> See A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>4</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 5 U.S.C. § 8107(c)(13)(A).

The August 30, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 27, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member