

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET L. HOPE and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 02-1779; Submitted on the Record;
Issued January 31, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant received the proper amount of compensation for a schedule award for a four percent permanent impairment to her right ear.

On September 23, 1999 appellant, then a 60-year-old hazardous waste worker, filed an occupational disease claim (Form CA-2), alleging that she sustained a loss of hearing while in the performance of duty.¹ She stated that she first became aware of her condition on June 7, 1988 and related it to her employment at that time. Appellant did not stop work. She filed for a schedule award on February 28, 2001.

By letter dated January 7, 2000, the Office of Workers' Compensation Programs referred appellant to Dr. G. Carl Shipp, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Shipp examined appellant on February 4, 2000, and audiometric testing on his behalf was performed. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear: 30, 25, 20 and 35 decibels; left ear: 25, 25, 30 and 20 decibels. Dr. Shipp diagnosed sensorineural hearing loss.

On October 15 2001 an Office medical adviser opined, after reviewing a statement of accepted facts and Dr. Shipp's February 4, 2000 report and accompanying audiogram, that appellant has a 3.8 percent monaural hearing loss in the right ear and a 0 percent monaural hearing loss in the left ear. The medical adviser stated that the date of maximum medical improvement was February 4, 2000.

¹ Appellant retired from the employing establishment effective September 30, 1997.

In a decision dated January 28, 2002, the Office awarded appellant a schedule award for a four percent monaural hearing loss. This determination was based upon an October 15, 2001 calculation of the Office's medical adviser, which in turn, was made on the basis of the February 4, 2000 audiological evaluation and report submitted by Dr. G. Carl Shipp, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 2.08 weeks, beginning on February 4, 2000 and continuing through February 18, 2000.

The Board finds that appellant received the proper amount of compensation for a schedule award for a four percent permanent impairment to her right ear

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulation,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulation specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ has been adopted by the Office as an appropriate standard for evaluating schedule losses.⁵ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.⁶

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.⁷ With respect to schedule awards for hearing impairments, the Act provides that for a total or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks of compensation.⁸

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ See *Joseph Lawrence, Jr.*, *supra* note 4; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ The Board notes that, in this case, the Office based its January 28, 2002 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for hearing loss remains unchanged. A.M.A., *Guides*, pp. 224-27 (4th ed. 1993); pp. 246-50 (5th ed. 2000). Therefore, it was harmless error for the Office to use the fourth edition, rather than the fifth edition of the A.M.A., *Guides* to calculate a schedule award in this case.

⁷ 5 U.S.C. § 8107.

⁸ 5 U.S.C. § 8107(c)(13)(A).

On appeal appellant does not dispute the amount of the award, but contends that she “lost” her hearing on June 7, 1988 and that she “was unpaid for that lost.” (sic) She does not have a total or 100 percent monaural hearing loss, but rather at most a four percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 4 percent loss of use of her right ear, she is entitled to 4 percent of the 52 weeks of compensation, which is 2.08 weeks. The Office, therefore, properly determined the number of weeks for which appellant is entitled to compensation under the schedule award provisions of the Act.

The decision dated January 28, 2002 of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 31, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member