

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY L. COUNTRYMAN and DEPARTMENTS OF THE ARMY & AIR FORCE, NATIONAL GUARD BUREAU, WHITEMAN AIR FORCE BASE, Mo.

*Docket No. 96-412; Submitted on the Record;  
Issued April 27, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs used the proper rate of pay in computing the amount of appellant's compensation for schedule award purposes.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.<sup>1</sup> 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 a determination is a matter which rests in the sound discretion of the Office.<sup>2</sup> For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be a uniform standard applicable to all claimants.<sup>3</sup> The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) has been adopted by the Office,<sup>4</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

On July 10, 1995 appellant, then a 44-year-old aircraft mechanic, filed a schedule award claim for employment-related hearing loss.<sup>6</sup> The record contains a June 26, 1995 audiogram obtained by Dr. Bradley S. Thedinger, a Board-certified otolaryngologist. An Office medical

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> See *Arthur E. Anderson*, 43 ECAB 691 (1992).

<sup>3</sup> See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>4</sup> FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

<sup>5</sup> *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>6</sup> By letter dated July 7, 1995, the Office accepted that appellant had sustained an employment-related binaural hearing loss.

adviser applied the Office's standardized procedures to the audiogram and determined that appellant sustained a 14 percent binaural hearing loss. The Office, however, recognized that where, as here, the sum of loss of hearing in each ear would be greater, the employee should be given the benefit of the more favorable allowance,<sup>7</sup> as prescribed in the Percentage Table of Schedule Awards, Form CA-699.<sup>8</sup> By decision dated September 7, 1995, the Office issued appellant a schedule award for a 79 percent hearing loss of the right ear and a 2 percent hearing loss of the left ear, for a total of 42.12 weeks of compensation at the 75 percent rate based on a weekly pay rate of \$794.90, for a total award of \$25,111.10.

In a September 12, 1995 letter, appellant alleged that the pay rate used for payment of his schedule award was incorrect, arguing that his National Guard earnings from June 24, 1994 to June 23, 1995 should be greater because he was recovering from the employment injury and could not attend active National Guard duty. By letter dated September 20, 1995, the Office responded that the proper pay rate had been used, and on September 26, 1995 mailed appellant the pertinent sections of the Office procedure manual and the A.M.A., *Guides*.

The Board finds that the Office used the proper rate of pay in computing appellant's schedule award.<sup>9</sup>

Section 8101(4) of the Act defines "monthly pay," for purposes of computing compensation benefits under the Act, as follows:

"[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater."

The Office's procedure manual provides as follows:

"The payment of a schedule award after a period allowed for the attainment of maximum improvement does not denote a recurrence of disability. The pay rate for compensation purposes would be the greatest of the pay rates set forth in paragraph 4a(1) above."

Therefore, in all situations, including those involving a schedule award, compensation is to be based on the pay rate at the time of injury, or the rate at the time disability for work begins, or the rate at the time of recurrence of disability of the type described in section 8101(4), whichever rate is greater. Wages paid for National Guard service when membership in the National Guard is a condition of the employee's civilian employment are included in determining the pay rate for a schedule award. To compute these wages, the wages paid for

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<sup>7</sup> FECA Program Memorandum No. 181 (issued November 26, 1984).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4 (September 1994).

<sup>9</sup> The Board notes that, as appellant does not dispute the medical findings in this case, the Board will not address the issue.

National Guard service during the year prior to injury are obtained, divided by 52, and the average added to the basic pay rate.<sup>10</sup>

In this case, the two pay rates which the Office compared to determine which was greater were appellant's monthly pay at his date of injury, April 20, 1994, and his monthly pay at the time disability began, June 24, 1995. Appellant's rate of pay as of April 20, 1994, the date of injury, was \$18.37 per hour, resulting in a weekly pay of \$734.80. Appellant's National Guard earnings for the period April 20, 1993 to April 19, 1994 totaled \$3,125.13, for a weekly average of \$60.10. Adding these figures together yields a weekly pay rate of \$794.90. The Office also determined that appellant's disability began on June 24, 1995, the date he reached maximum medical improvement. His rate of pay on that date was \$18.93 per hour, resulting in a weekly pay of \$757.20. His National Guard earnings for the period June 24, 1994 to June 23, 1995 totaled \$1,702.44, for a weekly average of \$32.74. When added together, these figures yield a pay rate of \$789.94. The Office based the September 7, 1995 schedule award on the larger of the two weekly pay rates, \$794.90.

On appeal, appellant contends that his National Guard earnings from June 24, 1994 to June 23, 1995 should be greater because he was recovering from the employment injury and could not attend active National Guard duty. There is, however, nothing in Office procedures to support this contention. Accordingly, as the date-of-injury pay rate used by the Office to calculate appellant's schedule award is higher than his date-of-disability pay rate, appellant has not established that the Office used an incorrect rate of pay to calculate his schedule award.

The decision of the Office of Workers' Compensation Programs dated September 7, 1995 is hereby affirmed.

Dated, Washington, D.C.  
April 27, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5(8) (September 1990).