

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM R. JONES and DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL MARKETING SERVICE, Washington, D.C.

*Docket No. 96-1611; Submitted on the Record;  
Issued April 8, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a nine percent binaural hearing loss for which he received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

The Federal Employees' Compensation Act, schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.<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 of Workers' Compensation Programs.<sup>2</sup> However, as a matter of administrative practice the Board has stated, "For consistent results and to insure equal justice under law to 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."<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993).<sup>4</sup> 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.<sup>5</sup> Then, the "fence" of 25 decibels is

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>4</sup> *George L. Cooper*, 40 ECAB 296, 302 (1988).

<sup>5</sup> A.M.A., *Guides*, 224-25 (4th ed. 1993).

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.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> 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 the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

In the present case, the Office accepted that appellant sustained an employment-related binaural hearing loss. By award of compensation dated January 22, 1996, the Office granted appellant a schedule award for a 9 percent binaural hearing loss. The award ran for 18 weeks from September 27, 1995 to January 30, 1996.

On November 28, 1995 an Office medical consultant reviewed the otologic and audiologic testing performed on September 27, 1995 by Dr. Peter D. Hauslein, a Board-certified otolaryngologist, and applied the Office's standardized procedures to this evaluation. 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 50, 50, 50 and 65 respectively. These decibel losses were totaled at 215 decibels and were divided by 4 to obtain the average hearing loss of 53.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 28.75 which was multiplied by the established factor of 1.5 to compute a 43.125 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 40, 15, 20 and 30 respectively. These decibel losses were totaled at 105 decibels and were divided by 4 to obtain the average hearing loss of 26.25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 1.25 which was multiplied by the established factor of 1.5 to compute a 1.875 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the right ear, 1.875 percent, was multiplied by the established factor of 5, added to the 43.125 percent loss in the left ear and this sum was divided by the established factor of 6 to obtain 8.75 percent which, when rounded to a whole figure, equals a 9 percent binaural hearing loss.<sup>10</sup>

The medical evidence reveals that, after applying the relevant standards of the A.M.A., *Guides* and rounding to whole figures, appellant has a 43 percent monaural hearing loss in his left ear, a 2 percent monaural hearing loss in his right ear and a 9 percent binaural hearing loss.

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

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

<sup>8</sup> *Id.*

<sup>9</sup> *Donald A. Larson*, 41 ECAB 947, 951 (1990).

<sup>10</sup> The Office medical consultant rounded some figures before arriving at the figures for left and right ear hearing loss and binaural hearing loss. The above-described calculations reflect that rounding should only occur at the end of the calculation process; see Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapters 3.700.3(b), 4(b)(2) (October 1990).

The schedule award provision of the Act, specifies the number of weeks of compensation to be awarded for loss of hearing: for total loss of hearing in one ear, the Act provides for 52 weeks of compensation, for total loss of hearing in both ears, the Act provides for 200 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate, so a 9 percent binaural hearing loss equals 18 weeks of compensation or 9 percent of 200 weeks.<sup>11</sup>

The Board notes, however, that FECA Program Memorandum No. 181 (issued November 26, 1974) provides:

“On occasion, the allowances for loss of hearing in each ear, if computed separately, may be greater than the combined value of bilateral hearing loss.”

In such cases, the employee should be given the benefit of the more favorable allowance, as prescribed in the awards for hands and feet in FECA Program Memorandum No. 134. Thus, in such cases, the claimant should be compensated in accordance with the scheduled allowances for the sum of loss of hearing in each ear.<sup>12</sup>

In the present case, the Office medical adviser did not apply FECA Program Memorandum No. 181 to the audiometric results reported by Dr. Hauslein. Audiometric testing reveals that appellant has a 43 percent monaural hearing loss in his left ear and a 2 percent monaural hearing loss in his right ear. Calculated separately appellant’s schedule award using the monaural hearing loss figures would result in 22.4 weeks of compensation (43 percent multiplied by 52 weeks plus 2 percent multiplied by 52 weeks) as opposed to 18 weeks of compensation for a 9 percent binaural hearing loss. For this reason the case will be remanded to the Office for issuance of a schedule award in accordance with the above-described standards.

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<sup>11</sup> 5 U.S.C. § 8107(c)(13), (c)(19).

<sup>12</sup> *Clarence L. Weeks*, 38 ECAB 613, 616-17 (1987), *Sheldon H. Pellow*, 33 ECAB 148, 150 (1981).

The decision of the Office of Workers' Compensation Programs dated January 22, 1996 is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
April 8, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member