

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BENJAMIN JENKINS and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 96-1990; Submitted on the Record;  
Issued June 11, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 4 percent loss of hearing in his left ear, for which he received a schedule award on December 19, 1995.

The compensation schedule of the Federal Employees' Compensation Act<sup>1</sup> specifies the number of weeks of compensation to be paid for permanent loss of use of various members or functions of the body. But the Act does not specify the manner, by which a percentage loss shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office of Workers' Compensation Programs.<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 uniform standards applicable to all claimants.<sup>3</sup>

The Office evaluates 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), using hearing levels recorded at frequencies of 500, 1000, 2000 and 3000 cycles per second. The losses at each frequency are added up and averaged, and a "fence" of 25 decibels is deducted because, according to the A.M.A., *Guides*, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.<sup>4</sup> The

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Richard Beggs*, 28 ECAB 387 (1977).

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

<sup>4</sup> A.M.A., *Guides* 224.

Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.<sup>5</sup>

The Office medical adviser applied the Office's standardized procedures to the audiogram obtained on October 23, 1995. Testing for the right ear at frequencies of 500, 1000, 2000 and 3000 cycles per second revealed decibel losses of 20, 20, 25 and 35 respectively. These losses were added for a total of 100 decibels and were divided by four to arrive at an average hearing loss of 25 decibels. This average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above), leaving a balance of 0 and meaning that appellant has no rateable hearing loss in the right ear.

Testing for the left ear at frequencies of 500, 1000, 2000 and 3000 cycles per second revealed decibel losses of 20, 20, 25 and 45 respectively. These losses were added for a total of 110 decibels and divided by 4 to arrive at an average hearing loss of 27.50 decibels. This average loss was reduced by 25 decibels (as discussed above) and the remaining average hearing loss of 2.5 decibels was multiplied by 1.5 to arrive at a hearing loss in the left ear of 3.75 percent, which the medical adviser rounded to 4 percent.

The Board finds that the Office followed standardized procedures in evaluating appellant's loss of hearing and properly calculated the extent of appellant rateable hearing loss.

Although the Office accepts that appellant's federal employment exposed him to hazardous levels of noise and although the medical evidence establishes that he sustained a high-frequency bilateral hearing loss as a result, the extent of appellant's hearing loss is not great enough in the right ear to entitle him to compensation for permanent impairment. An average hearing loss below 25 decibels provides no basis upon which to award compensation for permanent impairment because no practical impairment is considered to exist below that average.<sup>6</sup> Appellant's average hearing loss of 25 decibels in the right ear is not above the recognized 25 decibel threshold of compensable loss, and for this reason the Office properly issued no schedule award for the loss in the right ear. That hearing loss is said to be "nonrateable."

The Board explained above, the Act compensates permanent loss or impairment by the payment of a specific number of weeks of compensation. The Act's compensation schedule specifies a maximum of 52 weeks of compensation payable for the total loss of hearing in one ear,<sup>7</sup> and the schedule compensates partial loss of hearing at a proportionate rate.<sup>8</sup> Thus, compensation for a 4 percent loss of hearing in one ear is 4 percent of 52 weeks, or 2.08 weeks

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

<sup>6</sup> Further, if no practical impairment is considered to exist in an ear, there is no basis for the authorization of a hearing aid.

<sup>7</sup> 5 U.S.C. § 8107(c)(13)(A).

<sup>8</sup> *Id.* § 8107(c)(19).

of compensation. The Office actually awarded 2.60 weeks of compensation, which would represent a 5 percent loss of hearing, and appellant is not entitled to more.<sup>9</sup>

The December 19, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
June 11, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> For an employee with one or more dependents, schedule compensation is paid at a rate of 75 percent of the employee's monthly pay. *Id.* §§ 8107(a), 8110(b).