

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELTUS B. STIRLING, JR. and DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, Washington, D.C.

*Docket No. 97-534; Submitted on the Record;
Issued March 9, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly awarded appellant a total of \$24,977.57 in compensation for his employment-related 10 percent permanent binaural hearing loss.

The Board has duly reviewed the case record and concludes that the Office properly compensated appellant for his binaural hearing loss.

On July 6, 1994 appellant, then a 57-year-old supervisory special agent, filed a notice of occupational disease and claim for compensation alleging that he sustained binaural hearing loss as a result of his federal employment duties. After appropriate medical and factual development, the Office accepted appellant's claim for binaural hearing loss.

Subsequently, on August 23, 1994, appellant filed a claim for a schedule award.

In a decision dated December 16, 1994, based upon the reports of the Office referral physician and the Office medical adviser, the Office granted appellant a schedule award for a 10 percent binaural hearing loss for the period November 8, 1994 to March 27, 1995, for a total of 20 weeks of compensation. In order to determine the amount of compensation to which appellant was entitled for his accepted condition, the Office requested additional information from the employing establishment regarding appellant's position and earnings. The employing establishment submitted, among other things, a Form 50-B indicating that at the time of his voluntary retirement on June 30, 1994, appellant's annual basic pay as a GM-15 was \$86,589.00, and that appellant also received locality pay in the amount of \$3,663.00, and "other pay" in the amount of \$22,563.00, for a total salary of \$112,815.00. Based on this information, the Office determined that appellant's weekly compensation was \$1,501.52, or 75 percent of his weekly pay of \$2,002.02, and advised appellant that he would receive an initial check in the amount of \$5,887.58, followed every 4 weeks by checks for \$4,995.52.

By letter dated April 7, 1995, appellant advised the Office that although he had received his last compensation check, he had received a total of only \$24,997.57, rather than the \$30,030.40 which he believed that he was entitled.¹ Appellant requested an explanation for the apparently reduced award.

On June 21, 1995 the Office responded to appellant's request for information and explained that, pursuant to 5 U.S.C. § 8112, as his rate of pay exceeded the maximum limit payable, the amount he received for his schedule award was correct.

On June 23, 1995 appellant requested an oral hearing before an Office hearing representative.

In decisions dated July 14 and August 9, 1995, the Office denied appellant's request for a hearing on the grounds that his request was not received within 30 days of the decision.² The Office further denied appellant's request for the reason that the issue involved could be equally well resolved by requesting reconsideration from the district office and submitting additional evidence establishing that he had been improperly compensated for his hearing loss.

By letter dated June 6, 1996, appellant enlisted the aid of his senator, who, in turn, requested an explanation from the Office regarding the discrepancy between the amount of compensation the Office's award indicated he would receive, and the amount appellant had actually received.

In a letter dated July 3, 1996, the Office responded to the senator explaining that its initial award of compensation had been in error only in that it did not inform appellant that his monetary award would be limited to a maximum amount of compensation of \$1,248.88 per week under section 8112 of the Federal Employees' Compensation Act (5 U.S.C. § 8112). The Office stated that appellant had received the maximum amount allowable under the Act, but that because the initial award did not explain the effect of section 8112 on the award, appellant thought he had been underpaid.

In a decision dated October 10, 1996, the Office reissued its award of compensation for appellant's 10 percent binaural hearing loss to reflect a maximum allowable weekly payment of \$1,248.88.

¹ Appellant specifically noted that the Office's award of compensation indicated that he would receive weekly compensation in the amount of \$1,501.52 for a period of 20 weeks. Appellant asserted that, therefore, he should have received a total of \$30,030.40 in compensation.

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2). As appellant filed his appeal with the Board on October 22, 1996, the Office's July 14 and August 29, 1995 decisions are not properly before the Board.

The Board finds that the Office properly awarded appellant a total of \$24,977.57 in compensation for his employment-related 10 percent binaural hearing loss. 5 U.S.C. § 8112(a) provides in pertinent part: “Except as provided by section 8138³ of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15....” The record indicates that appellant’s monthly pay, which included locality adjustment pay and “other pay,” exceeded the maximum rate of basic pay for a GS-15, Step 10. Appellant’s Form 50-B indicates that his basic pay was \$86,589.00. Therefore, the Office properly determined that appellant was entitled to a total award in the amount of \$24,977.57, or \$86,589.00 divided by 52 weeks, multiplied by the compensation rate of 75 percent, multiplied by the 20-week award duration.

Accordingly, the Office’s decision dated October 10, 1996 is affirmed.

Dated, Washington, D.C.
March 9, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ Section 8138 applies only to noncitizens and aliens and is therefore inapplicable to this claim. 5 U.S.C. § 8138.