

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERNESTO ORTIZ and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT AGENCY, Albuquerque, N.M.

*Docket No. 97-2192; Submitted on the Record;  
Issued April 7, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant has a ratable loss of hearing.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body, including loss of hearing.<sup>3</sup> However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.<sup>4</sup>

The Board finds that appellant does not have a ratable loss of hearing.

The Office properly applied the A.M.A., *Guides* to the results of an audiogram prepared on November 18, 1996 for Dr. Ronald Blumenfeld, a Board-certified otolaryngologist, to whom the Office referred appellant for an evaluation. As provided by the A.M.A., *Guides*, the losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second --10, 15, 25 and 35 for the left ear and 15, 15, 15 and 30 for the right ear -- were added up. For each ear, this total decibel sum of the hearing threshold levels was less than 100, which, using Table 1 of chapter 9 of the fourth

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 5 U.S.C. § 8107(c)(13).

<sup>4</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

edition of the A.M.A., *Guides*, results in a 0 percent monaural loss of hearing in each ear.<sup>5</sup> Appellant does not have a ratable loss of hearing under the standards used by the Office.

An Office medical adviser properly selected the report of Dr. Blumenfeld to rate appellant's loss of hearing. As pointed out by the Office medical adviser, this report meets the Office's standards. Unlike the two reports of hearing evaluations submitted by appellant, Dr. Blumenfeld's report was accompanied by results of speech discrimination testing and speech reception thresholds, the audiogram was performed by an audiologist, an examination of appellant's ears occurred and the date the audiometer was calibrated was indicated.

The decision of the Office of Workers' Compensation Programs dated May 7, 1997 is affirmed.

Dated, Washington, D.C.  
April 7, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> The fourth edition of the A.M.A., *Guides* states at chapter 9.1(a): "If the average of the hearing levels at 500, 1,000, 2,000 and 3,000 hertz is 25 decibels or less, according to 1989 ANSI standards, no impairment is considered to exist in the ability to hear everyday sounds under everyday listening conditions."