

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH E. KOKKO and DEPARTMENT OF THE AIR FORCE,  
McCLELLAN AIR FORCE BASE, Sacramento, CA

*Docket No. 98-988; Submitted on the Record;  
Issued December 10, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained greater than a four percent permanent loss of hearing in the left ear, for which he received a schedule award and whether he sustained any ratable hearing loss in the right ear.

On March 31, 1997 appellant, then a 48-year-old aircraft sheet metal work leader, filed an occupational disease claim alleging that he sustained a permanent hearing loss which he attributed to factors of his employment. He also filed a claim for a schedule award on that date.

In a report dated August 26, 1997, Dr. Stuart Gherini, a Board-certified otolaryngologist and Office referral physician, diagnosed bilateral noise-induced, high frequency sensorineural hearing loss and binaural tinnitus. He stated that there was a ratable hearing impairment for the left ear only. Dr. Gherini provided the results of audiometric testing, which showed decibel losses of 30, 25, 15 and 15 for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of 85 decibels. The audiogram showed decibel losses of 40, 20, 20 and 30 in the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of 110 decibels. He stated that appellant had a 3.8 percent hearing loss in the left ear and a 0 percent hearing loss in the right ear.

By decision dated October 3, 1997, the Office of Workers' Compensation Programs accepted that appellant sustained bilateral hearing loss in the performance of duty. The Office asked the district medical director to determine the extent of appellant's permanent hearing loss.

In a report dated October 19, 1997, Dr. David N. Schindler, a Board-certified otolaryngologist and Office medical consultant, stated that he had reviewed the medical records for appellant and had determined, using the audiometric results and the report of Dr. Gherini, that appellant had a zero percent hearing loss in the right ear and a four percent loss of hearing in the left ear. The audiogram obtained for Dr. Gherini showed decibel losses of 30, 25, 15 and 15 for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of

85 decibels. Dr. Schindler divided the total of 85 decibels by 4, which equals a 21.25 decibel average hearing loss and reduced this 21.25 average loss by the “fence” of 25 decibels and multiplied by 1.5 which equals a 0 percent hearing loss in the right ear according to the Office’s standardized procedures for determining hearing loss. The audiogram showed decibel losses of 40, 20, 20 and 30 in the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of 110 decibels. Dr. Schindler divided this total of 110 by 4, which equals a 27.5 decibel average hearing loss and reduced this average by 25 decibels and multiplied by 1.5, which equals a 3.8 percent hearing loss in the left ear, rounded to 4 percent.

By decision dated January 12, 1998, the Office granted appellant a schedule award based upon a four percent permanent hearing loss in the right ear and stated that the medical evidence did not establish any compensable hearing loss in the left ear.<sup>1</sup>

The Board finds that appellant sustained no greater than a four percent hearing loss in the left ear, for which he received a schedule award and that he sustained no ratable hearing loss in the right ear.

The schedule award provisions of the Federal Employees’ Compensation Act<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss of the members of the body listed in the schedule. The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.<sup>3</sup> However, for consistent results and to ensure equal justice 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>4</sup>

The Office evaluates industrial loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added and averaged and a “fence” of 25 decibels is deducted since, 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. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.<sup>5</sup>

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<sup>1</sup> The Board notes that the Office inadvertently stated in its decision that the right ear sustained the four percent hearing loss and the left ear had no hearing loss, rather than the reverse. Upon remand of the case, the Office should issue a corrected decision to reflect a four percent hearing loss in the left ear and no ratable hearing loss in the right ear.

<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* § 8107.

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>4</sup> *Henry L. King*, 25 ECAB 39, 44 (1973).

<sup>5</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.<sup>6</sup>

In a report dated October 19, 1997, Dr. Schindler, a Board-certified otolaryngologist and Office medical consultant, stated that he had reviewed the medical records for appellant and had determined, using the audiometric results and the report of Dr. Gherini, that appellant had a zero percent hearing loss in the right ear and a four percent loss of hearing in the left ear. The audiogram obtained for Dr. Gherini showed decibel losses of 30, 25, 15 and 15 for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of 85 decibels. Dr. Schindler divided the total of 85 decibels by 4, which equals a percent 21.5 average hearing loss and reduced this 21.5 average loss by the "fence" of 25 decibels and multiplied by 1.5, which equals a 0 percent hearing loss in the right ear according to the Office's standardized procedures for determining hearing loss. The audiogram showed decibel losses of 40, 20, 20 and 30 in the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second for a total loss of 110 decibels. Dr. Schindler divided this total of 110 by 4, which equals a 27.5 decibel average hearing loss and reduced this average by 25 decibels and multiplied by 1.5, which equals a 3.8 percent hearing loss in the left ear, rounded to 4 percent. There is no medical evidence of record which establishes that appellant had more than a four percent permanent hearing loss in the left ear or that he had a ratable hearing loss in the right ear.

The decisions of the Office of Workers' Compensation Programs dated January 12, 1998 and October 3, 1997 are affirmed.

Dated, Washington, D.C.  
December 10, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> *Daniel C. Goings, supra* note 3.