

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES H. PENDERGRASS and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, Va.

*Docket No. 97-1417; Submitted on the Record;
Issued February 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

In a decision dated February 10, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a four percent binaural hearing loss. This determination was based upon the April 30, 1996 calculation of the Office's medical adviser which in turn, was made on the basis of the November 27, 1995 audiological evaluation and report submitted by Dr. John T. Kalafsky, a Board-certified otolaryngologist and an Office referral physician.¹ The Office awarded compensation for a period of eight weeks, beginning on November 25, 1995 and continuing through January 19, 1996.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a four percent binaural hearing loss, for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.³ To ensure consistent results and equal

¹ The record also includes a September 1, 1995, report submitted by Dr. Andrey I. Blumberg, a Board-certified otolaryngologist and an Office referral physician, in which he diagnosed appellant as suffering from a 3.1 percent binaural hearing loss. Although Dr. Blumberg's report does not reference a particular audiogram, his findings appear to be based on appellant's August 4, 1995 audiogram, which reveals a lower level of hearing loss than the November 27, 1995 audiogram taken for Dr. Kalafsky.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁴

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Utilizing the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged and a “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions.⁵ 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 five, then added to the greater loss and the total is divided by six, to arrive at the amount of the binaural hearing loss.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

In reviewing appellant’s November 27, 1995 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 10, 40, 25 and 30, respectively, for a total of 105 decibels. When this figure is divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 is reduced by 25 decibels to equal 1.25, which when multiplied by the established factor of 1.5, results in an 1.875 percent monaural hearing loss for the right ear.⁸ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 15, 40, 40 and 35 decibels respectively, for a total of 130 decibels. Utilizing the same above-noted formula results in an 11.25 percent monaural hearing loss for the left ear.⁹ The 1.875 percent hearing loss for the right ear is multiplied by 5, to obtain the total of 9.375. The 9.375 is then added to the 11.25 percent hearing loss for the left ear to obtain the total of 20.625. The 20.625 is then divided by the sum of 6, in order to calculate a binaural loss of hearing of 3.43 percent. Consequently, the evidence does not establish that appellant has greater than a four percent binaural hearing loss, for which he received a schedule award.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.¹⁰ With respect to the

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁵ See A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Escher*, 25 ECAB 335 (1974); *Terry A. Wethington*, 25 ECAB 247 (1974).

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Daniel C. Goings*, *supra* note 3.

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (October 1990).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107.

schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent, loss of hearing in both ears an employee shall receive 200 weeks compensation.¹¹ In the instant case, appellant does not have a total, or 100 percent binaural hearing loss, but rather a four percent binaural hearing loss, which the Office has determined was employment related. As appellant has only a 4 percent loss of use of both ears, he is entitled to 4 percent of the 200 weeks of compensation, which is 8 weeks. The Office, therefore, properly determined the number of weeks of compensation, for which appellant is entitled under the schedule award.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 10, 1997, is affirmed.

Dated, Washington, D.C.
February 8, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹¹ 5 U.S.C. § 8107(c)(13)(B).