

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD R. FLANNERY and DEPARTMENT OF THE AIR FORCE,
TACTICAL AIR COMMAND, SELFRIDGE ANG BASE, Mich.

*Docket No. 97-1411; Submitted on the Record;
Issued January 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 37 percent binaural hearing loss for which he received a schedule award.

In a decision dated February 3, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a 37 percent permanent disability binaural hearing loss. This determination was based upon the calculation of its medical adviser, which, in turn, was made on the basis of the May 7, 1996 audiogram evaluation and hearing examination report submitted by Jackie Mummert Gilbert, an audiologist. The period of the award ran from May 7 to October 6, 1997 for 74 weeks of compensation.

Section 8107 of the Federal Employees' Compensation Act¹ 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.² To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.³

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), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then 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. The

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

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

remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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.⁴ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁵

The Board finds that appellant has a 38.4375 percent permanent binaural hearing loss. While the Office properly certified as accurate the audiologist's May 7, 1997 audiogram and applied the approved standardized A.M.A., *Guides* to the report and attached audiogram of Ms. Gilbert, an audiologist, it made mistakes in arithmetic and consequently, incorrectly calculated the percentage of binaural loss of hearing reflected by that evidence.⁶ The Board also finds that the Office properly certified as accurate the audiogram and report performed by Ms. Gilbert to establish the extent of appellant's hearing loss.

In the present case, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear reveal decibel losses of 45, 35, 55 and 60, respectively, for a total of 195 decibels. This figure is divided by 4 to obtain the average hearing loss at those frequencies at 48.75. The average 48.75 is reduced by 25 decibels to equal 23.75, which is multiplied by the established factor of 1.5 to compute a 35.625 percent monaural hearing loss for the right ear.⁷ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 reveal decibel losses of 55, 55, 65 and 65 decibels respectively for a total of 240. This figure is divided by 4 to obtain the average hearing loss at those frequencies at 60. The average 60 is reduced by 25 decibels to equal 35, which is multiplied by the established factor of 1.5 to compute a 52.5 percent monaural hearing loss for the left ear.⁸ The 35.625 percent hearing loss for the right ear (the ear with the lesser loss) is multiplied by 5, to obtain the total of 178.125. The 178.125 is then added to the 52.5 percent hearing loss for the left ear (the ear with the greater loss) to obtain the total of 230.625. The 230.625 is divided by the sum of 6, in order to calculate a binaural loss of hearing of 38.4375, which is rounded out to 38 percent.⁹

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

⁵ *Danniel C. Goings*, *supra* note 2.

⁶ *Joshua A. Holmes*, 42 ECAB 231 (1990); (If an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing. In *Rubel R. Gracia*, 33 ECAB 1171, 1175 (1982), the Board pointed out that there was no error by the Office in determining the percentage of appellant's hearing loss based on an audiogram report prepared by an audiologist since an Office medical adviser, who is a physician, had certified the audiologist's audiogram as being accurate and had then properly determined the percentage of appellant's hearing loss utilizing the approved standardized procedures.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (October 1990).

⁸ *Id.*

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107.

schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, of 100 percent loss of hearing in both ears, an employee shall receive 200 weeks compensation.¹¹ For the reasons stated above, the Board modifies the Office's February 3, 1997 schedule award to reflect that appellant has a 38 percent permanent binaural loss of hearing rather than the awarded 37 percent, and shall be compensated for 76 weeks rather than the awarded 74 weeks of compensation.¹²

Appellant's belief that because his hearing loss first occurred May 1, 1980 he should be awarded more compensation is irrelevant to uniform application of the schedule award standards for hearing loss. Consequently, the amount payable for a 38 percent loss would be 38 percent of 200 weeks or 76 weeks of compensation.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 3, 1997 is affirmed as modified.

Dated, Washington, D.C.
January 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ 5 U.S.C. § 8107(c)(13)(B).

¹² The schedule award commences on the date of "maximum improvement" or the point at which the injury has stabilized and will not improve further; *see Marie J. Born*, 27 ECAB 623 (1976). That determination is based on the medical evidence and the date is usually the date of the medical examination which determined the extent of the hearing loss; *see James L. Thomas*, 31 ECAB 1088 (1980). In the instant case, the date was May 7, 1996, the date of the audiologic examination conducted by audiologist, Ms. Gilbert, the results of which were used as the basis of the schedule award.