

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER J. RIEFF and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Washington, D.C.

*Docket No. 97-1613; Submitted on the Record;
Issued January 8, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 23 percent binaural hearing loss for which he received a schedule award.

In a decision dated March 10, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a 23 percent binaural hearing loss and provided appellant with authorization for a hearing aid evaluation. This determination was based upon the calculation of its medical adviser, which, in turn, was made on the basis of the August 28, 1996 audiogram evaluation and the November 26, 1996 report faxed to the Office from Dr. Howard D. Zipper, a Board-certified otolaryngologist, to whom the Office referred appellant. The period of the award ran from August 28, 1996 to July 15, 1997 for 46 weeks of compensation.¹

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a 23 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

¹ The schedule award commences 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 August 28, 1996, the date of the audiologic examination obtained by Dr. Zipper, the results of which were used as a basis of the schedule award. The award ran from August 28, 1996 to July 15, 1997.

² 5 U.S.C. § 8107.

percentage rests in the sound discretion of the Office.³ 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.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), 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.⁵ The 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.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

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 35, 40, 35 and 45, respectively, for a total of 155 decibels. This figure is divided by 4 to obtain the average hearing loss at those frequencies at 38.75. The average 38.75 is reduced by 25 decibels to equal 13.75, which is multiplied by the established factor of 1.5 to compute a 20.625 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 revealed decibel losses of 45, 45, 45 and 60 decibels respectively for a total of 195. 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 left ear.⁹ The 20.625 percent hearing loss for the right ear (the ear with the lesser loss) is multiplied by 5 to obtain the total of 103.125. The 103.125 is then added to the 35.625 percent hearing loss for the left ear (the ear with the greater loss) to obtain the total of 138.75. The 138.75 is divided by the sum of 6, in order to calculate a binaural loss of hearing of 23.125, in which the Office has rounded to 23 percent.¹⁰

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

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

⁵ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

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 3.700.4b(2)(b) (October 1990).

⁹ *Id.*

¹⁰ *Id.*

A schedule award under the Federal Employees' Compensation 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.¹¹ Appellant's belief that he is entitled to compensation that includes the years from 1971 to 1995, when he was under constant exposure to noises that caused him to lose his 23 percent binaural hearing loss is irrelevant to the uniform application of the schedule award standards for hearing loss.¹² With respect to the 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 a maximum of 200 weeks of compensation.¹³ Consequently, the amount payable for a 23 percent binaural hearing loss would be 23 percent of 200 weeks, or 46 weeks of compensation. Appellant is entitled to no more than the schedule award he received.¹⁴

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

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹¹ See *supra* note 2.

¹² See *supra* note 1.

¹³ 5 U.S.C. § 8107(c)(13)(B).

¹⁴ See *supra* note 1.