

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD C. SWIGER and DEPARTMENT OF THE NAVY,
NAVAL SURFACE WARFARE CENTER-WHITE OAK, Silver Spring, Md.

*Docket No. 97-2809; Submitted on the Record;
Issued July 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

In a decision dated June 12, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a two percent binaural hearing loss. This determination was based upon the April 22, 1997 calculation of the Office's medical adviser which in turn, was made on the basis of the February 18, 1997 audiological evaluation and report submitted by Dr. Ali Moghtader, a Board-certified otolaryngologist and an Office referral physician. The Office awarded compensation for a period of four weeks, beginning on February 18, 1997 and continuing through March 17, 1997.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a three percent binaural hearing loss.

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

¹ 5 U.S.C. § 8107.

² *Daniel 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).

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 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.⁴ 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.⁵ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

In reviewing appellant’s February 18, 1997 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 20, 15, 10 and 60, 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 a 1.875 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 hertz revealed decibel losses of 20, 15, 15 and 65 decibels respectively, for a total of 115 decibels. Utilizing the same above-noted formula results in a 5.625 percent monaural hearing loss for the left ear.⁸ The 1.875 percent hearing loss for the right ear (the ear with the lesser loss) when multiplied by 5, yields a product of 9.375. The 9.375 is then added to the 5.625 percent hearing loss for the left ear (the ear with the greater loss) to obtain a total of 15. The 15 is then divided by 6, in order to calculate a binaural loss of hearing of 2.5 percent.

In the instant case, the Office medical adviser calculated a right ear hearing loss of 1.87 and a left ear hearing loss of 5.62, resulting in a binaural hearing loss rating of 2.49 percent, which the Office rounded down to two percent. However, as previously noted, when the correct monaural hearing loss figures of 1.875 and 5.625 are utilized, appellant’s binaural hearing loss rating increases to 2.5 percent, which must then be rounded up to three percent.⁹ Accordingly, the Office’s June 12, 1997 decision is modified to reflect a binaural hearing loss rating of three percent.

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

⁵ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ *Daniel C. Goings*, *supra* note 2.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 1994).

⁸ *Id.*

⁹ *Id.*

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 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 three percent binaural hearing loss. As such, he is entitled to three percent of the 200 weeks of compensation, which is six weeks. Inasmuch as the Office only awarded appellant four weeks' compensation, the decision is modified to reflect appellant's entitlement to an additional two weeks' compensation.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 12, 1997, is affirmed as modified.

Dated, Washington, D.C.

July 8, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(13)(B).