

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLIE A. KILPATRICK and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Pensacola, Fla.

*Docket No. 97-2859; Submitted on the Record;
Issued June 24, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained more than 10 percent hearing loss in both ears for which he has received a schedule award.

On September 6, 1995 appellant, then a former aircraft mechanic,¹ filed a claim for compensation alleging that he had sustained hearing loss in both ears as a result of factors of federal employment.

On July 19, 1996 the Office of Workers' Compensation Programs referred appellant, a statement of accepted facts and his medical record to Dr. James M. Carlisle, a specialist in otolaryngology, for an audiologic and otologic evaluation. He performed an otologic evaluation of appellant on August 7, 1996 and audiometric testing was conducted on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 15, 40 and 50 decibels; left ear 10, 15, 45 and 85 decibels. In his August 9, 1996 report, Dr. Carlisle stated that the auditory assessment revealed a bilateral noise-induced sensorineural hearing loss more severe on the left. In comparing these results to a 1978 hearing loss evaluation, Dr. Carlisle opined: "Certainly there has been enough workplace exposure as a federal employee to cause this additional loss."

An Office medical adviser reviewed Dr. Carlisle's report and audiometric test results and, after applying the Office's current standards for evaluating hearing loss to the results of the August 9, 1996 audiologic tests, determined that appellant had a 10 percent bilateral hearing loss.

On September 10, 1996 the Office granted appellant a schedule award for a 10 percent bilateral hearing loss and authorized the purchase of hearing aids. The period of the award ran

¹ Appellant resigned effective March 31, 1995.

for 20 weeks from August 7, 1996, the date of the audiogram performed for Dr. Carlisle, to December 24, 1996.

On March 25, 1997 appellant requested reconsideration. On May 20, 1997 the Office denied appellant's application for review. On July 14, 1997 appellant again requested reconsideration. In support of his request, appellant submitted a June 17, 1997 medical report from Dr. Samuel J. LaMonte, Board-certified in otolaryngology, in which he stated that, based on review of appellant's audiogram, he had high frequency hearing loss in both ears which may have been affected, in part, by appellant's use of prescribed Naproxen. Dr. LaMonte noted that, based on the Florida Impairment Guide of 1996, appellant had a 16.6 percent disability of binaural hearing loss. On August 6, 1997 the Office denied modification of the Office's September 10, 1996 decision.

The Board finds that appellant has no more than a 10 percent bilateral hearing loss for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks' of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.² The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.³ However, as a matter of administrative practice, the Board has stated: "For consistent results and to ensure equal justice under the law 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."⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁶ Then, the "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 speech under everyday conditions.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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

² 5 U.S.C. § 8107.

³ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁴ *Id.*

⁵ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁶ A.M.A., *Guides* 224 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

The Office medical adviser applied the Office's standardized procedures to the August 9, 1996 audiogram performed for Dr. Carlisle. Testing for the right ear revealed decibel losses of 15, 15, 40 and 50 respectively. These decibel losses were totaled at 120 and divided by 4 to obtain the average hearing loss at those cycles of 30. The average of 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 5 decibels for the right ear which was multiplied by the established factor 1.5 to compute a 7.5 percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 10, 15, 45 and 85 decibels respectively. These decibel losses were totaled at 155 decibels and divided by 4 to obtain the average hearing loss at those cycles of 38.75 decibels. The average of 38.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 13.75 decibels which was multiplied by the established factor 1.5 to compute a 20.63 percent loss of hearing for the left ear. The right ear loss of 7.5 was then multiplied by 5, added to the left ear loss of 20.63 and then divided by 6 to equal a 9.69 percent binaural loss of hearing. Based upon these calculations, appellant was granted a schedule award for a 10 percent binaural hearing loss which is compensable under the Act.

The Board notes that Dr. La Monte's June 17, 1997 medical report did not rely on the A.M.A., *Guides* to determine appellant's impairment rating and therefore has no probative value in this case.

⁹ *Id.*

¹⁰ *Kenneth E. Leone, supra* note 3.

The decisions of the Office of Workers' Compensation Programs dated August 6 and May 20, 1997 and September 10, 1996 are hereby affirmed.¹¹

Dated, Washington, D.C.
June 24, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ The Board notes that subsequent to the Office's August 6, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).