

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY R. TAYLOR and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Mount Hope, W.Va.

*Docket No. 97-1997; Submitted on the Record;
Issued March 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provision 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 of Workers' Compensation Programs.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* (fourth edition 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

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).

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 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

The district medical adviser applied the Office's standard procedures to the August 14, 1996 audiogram performed for Dr. Robert B. Miller, a Board-certified otolaryngologist, to whom the Office referred appellant. Testing for the right ear at the relevant frequencies revealed decibel losses of 5, 10, 0 and 15 respectively. These decibels were totaled at 30 and were divided by 4 to obtain the average hearing loss at those cycles of 7.5 decibels. The average of 7.5 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 17.5 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.⁷ Testing for the left ear at the relevant frequencies revealed decibel losses of 10, 5, 0 and 10 respectively. These decibels were totaled at 25 and were divided by 4 to obtain the average hearing loss at those cycles of 6.25 decibels. The average of 6.25 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 18.75 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.⁸ Accordingly, pursuant to the Office's standardized procedures, the district medical adviser properly determined that appellant had a nonratable hearing loss in both ears.⁹

⁴ 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.

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

⁶ *Daniel C. Goings*, *supra* note 2.

⁷ See A.M.A., *Guides* 224 (4th ed. 1993).

⁸ *Id.*

⁹ The district medical adviser determined that hearing aids would not be helpful to appellant, as his hearing loss in speech frequencies was minimal.

The decision of the Office of Workers' Compensation Programs dated February 5, 1997 is affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member