

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM F. SCHELL and DEPARTMENT OF THE ARMY,
FORT McPHERSON, GA

*Docket No. 98-493; Submitted on the Record;
Issued October 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has more than a six percent hearing loss in the right ear; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

The Board has reviewed the record and finds that appellant has not established more than a six percent monaural hearing loss.

By decision dated September 25, 1997, the Office granted appellant a schedule award for a six percent hearing loss of the right ear. By decision dated November 20, 1997, the Office denied appellant's request for review of the written record.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* using the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz). The threshold levels at each frequency are added up and averaged to determine the estimated hearing level for speech. A "fence" of 25 decibels (dBs) is deducted since, as the *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.¹

In the present case, the Office referred appellant for examination by Dr. James A. Carter, an otolaryngologist. In a form report (CA-1332) Dr. Carter diagnosed sensorineural hearing loss and provided results from an audiometric test performed by a certified audiologist on July 2, 1997. For the right ear, the decibel losses at 500, 1,000, 2,000 and 3,000 Hz were 10, 20, 30 and 55. For the left ear, the results were 10, 10, 15 and 65 at these same frequencies. The

¹ See *Daniel C. Goings*, 37 ECAB 781 (1986).

report of Dr. Carter and the accompanying audiogram represent the only medical evidence that meets the Office's requirements for evaluating hearing loss.²

In a memorandum dated August 13, 1997, an Office medical adviser properly applied the hearing loss formula pursuant to the A.M.A., *Guides*. The decibel losses of 10, 20, 30 and 55 are averaged, which in this case equals 28.75. The fence of 25 is deducted and the remaining 3.75 is multiplied by 1.5 for a 5.625 percent monaural hearing loss. This number is rounded up for a six percent hearing loss in the right ear.

For the left ear, the average decibel loss is 25 and when the fence is deducted there is no ratable hearing loss. Accordingly, the Board finds that the Office properly determined that based on the medical evidence appellant had a six percent hearing loss in the right ear. The maximum number of weeks of compensation for total hearing loss in one ear is 52³ and therefore appellant is entitled to 6 percent of 52, or 3.12 weeks of compensation.

The Board further finds that the Office properly denied appellant's request for a review of the written record.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁴ Section 10.131 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ The regulations provide that a claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of the issuance of the decision, as determined by the postmark of the request.⁶

In the present case, appellant's request for a review of the written record was postmarked October 29, 1997. Since this is more than 30 days after the September 25, 1997 Office decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.⁷ In this case, the Office advised appellant that the issue could be addressed through

² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994). The medical evidence required for hearing loss evaluation includes examination by an otolaryngologist and audiologic testing by a certified audiologist.

³ 5 U.S.C. § 8107(c)(13)(a).

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.131.

⁶ 20 C.F.R. § 10.131(b).

⁷ See *Cora L. Falcon*, 43 ECAB 915 (1992).

the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.⁸ There is no evidence of an abuse of discretion in this case.

The decisions of the Office of Workers' Compensation Programs dated November 20 and September 25, 1997 are affirmed.

Dated, Washington, D.C.
October 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁸ *Id.*