

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE H. WOLFREY and DEPARTMENT OF THE ARMY,
ARMY NATIONAL GUARD, Annville, PA

*Docket No. 98-774; Submitted on the Record;
Issued October 15, 1999*

DECISION and ORDER

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

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

In a decision dated December 3, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a two percent monaural hearing loss of the left ear. This determination was based upon the November 18, 1997 calculation of the Office's medical adviser, which in turn, was made on the basis of the September 25, 1997 audiological evaluation and report submitted by Dr. Herbert Kean, a Board-certified otolaryngologist and an Office referral physician. The Office awarded compensation for a period of 1.04 weeks, beginning on September 25, 1997 and continuing through October 2, 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 two percent monaural 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* (4th ed. 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.⁵ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

In reviewing appellant’s September 25, 1997 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the left ear reveal decibel losses of 10, 10, 30 and 55, 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 left ear.⁷ Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 15, 25 and 35 decibels respectively, for a total of 95 decibels. Utilizing the same above-noted formula results in a 0 percent monaural hearing loss for the right ear.⁸ With respect to appellant’s 1.875 percent monaural hearing loss for the left ear, the Office properly rounded this figure up to two percent.⁹

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 one ear, an employee shall receive 52 weeks’ compensation.¹¹ In the instant case, appellant does not have a total, or 100 percent monaural hearing loss, but rather at most a two percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a two percent loss of use of his left ear, he is entitled to two percent of the 52 weeks’ of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

⁴ See A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335 (1974); *Terry A. Wethington*, 25 ECAB 247 (1974).

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

⁶ *Danniel C. Goings*, *supra* note 2.

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

⁸ *Id.*

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107.

¹¹ 5 U.S.C. § 8107(c)(13)(a).

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 3, 1997 is affirmed.

Dated, Washington, D.C.
October 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member