

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. BROWN and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, DC

*Docket No. 98-1419; Submitted on the Record;
Issued October 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he is entitled to a schedule award for a hearing loss.

On May 2, 1997 appellant, then a 57-year-old retired special agent, filed a notice of an occupational disease claim, Form CA-2, alleging that he sustained a hearing loss from the use of and training with firearms at work. Appellant retired on January 3, 1997.

By decision dated February 4, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for a hearing loss due to his employment-related noise exposure. The Office found, however, that appellant's hearing loss was not severe enough to be ratable pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), and therefore appellant was not entitled to a schedule award for his hearing loss.

The Board finds that the Office properly determined that appellant is not entitled to a schedule award for his hearing loss.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

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.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides* (4th ed. 1993) using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The losses at each frequency are added up and averaged and the “fence” of 25 decibels is deducted since, 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. 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 5, then added to the greater loss and the total is divided by 6, to arrive at the amount of the binaural loss.⁴ The Board has concurred in the Office’s use of this standard for evaluating hearing losses for schedule award purposes.⁵

In this case, the Office determined that appellant was not entitled to a schedule award based on the most recent audiogram of record dated October 13, 1997, and the report by the district medical adviser dated February 3, 1998. The second opinion physician, Dr. Sanford R. Dolgin, a Board-certified otolaryngologist, signed his agreement with the results of the October 13, 1997 audiogram which was performed by the audiologist, Ken Booher. In his report, the district medical adviser determined that, on the October 13, 1997 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear, 5, 0, 10 and 35 decibels respectively, totaled 50 decibels which divided by 4 yielded the average hearing loss at those frequencies of 12.5. He reduced the average of 12.5 by 25 decibels to equal 0 which he multiplied by the established factor of 1.5 to compute a 0 percent monaural loss for the right ear. The district medical adviser totaled the above-mentioned frequencies for the left ear, 5, 0, 5 and 50 respectively, at 60 which he divided by 4 to obtain the average hearing loss at those frequencies of 15. He reduced 15 by the 25 decibel “fence” to equal 0, which he then multiplied by the established factor of 1.5 to compute a 0 percent loss of the left ear. The district medical adviser then multiplied the 0 percent loss in the left ear by 5, added it to the 0 percent loss in the right ear and divided the sum by 6 to calculate appellant’s binaural loss at 0 percent. The Board finds that the district medical adviser applied the proper standards to the October 13, 1997 audiogram results and properly determined that appellant has a zero percent binaural loss. Appellant has therefore not established that he sustained a ratable scheduled hearing loss under the Act.

³ *Arthur E. Anderson, supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

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

⁵ *Danniel C. Goings, supra* note 2.

The decision of the Office of Workers' Compensation Programs dated February 4, 1998 is hereby affirmed.

Dated, Washington, D.C.
October 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member