

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN A. KEEFE and DEPARTMENT OF THE TREASURY,  
SECRET SERVICE, Washington, DC

*Docket No. 98-720; Submitted on the Record;  
Issued September 8, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 13 percent binaural hearing loss of his right ear for which he was granted a schedule award.

On March 10, 1997 appellant, then a 60-year-old former employee, filed a notice of occupational disease (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment.

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description and noise level test results performed at the employing establishment.

The Office then referred appellant to an audiogram evaluation and to Dr. Roger Zundel, a specialist in otolaryngology, for additional testing.<sup>1</sup> In a January 13, 1997 medical report, Dr. Zundel noted that, on January 3, 1997, he had examined appellant and reviewed appellant's medical report and the statement of accepted facts. Dr. Zundel stated that appellant had sensorineural hearing loss consistent with loss caused by noise exposure. He also noted conductive hearing loss based on appellant's most recent audiogram which was consistent with otosclerosis. Dr. Zundel noted that otosclerosis was not necessarily caused by noise exposure.

Upon review of the audiogram and Dr. Zundel's January 13, 1997 medical report, the Office medical adviser on February 4, 1997, determined that appellant had a 13 percent binaural work-related hearing loss.

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<sup>1</sup> The audiologist noted that questions regarding causation should be addressed by an otologist. The Office's referral to Dr. Zundell included the audiologist's report but did not specifically require the doctor to review the audiological test results or to calculate a percentage of impairment for schedule award purposes.

On September 22, 1997 the Office awarded appellant a 13 percent schedule award for binaural hearing loss.

The Board finds that appellant has no more than a 13 percent binaural 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.<sup>2</sup> 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.<sup>3</sup> 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."<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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 hearing loss.<sup>9</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>10</sup>

In this case, the Office medical adviser reviewed the October 30, 1996 audiogram and noted the following. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 20, 25, 35 and 50 respectively. These decibel losses were totaled to 130 and divided by 4 to obtain the average hearing loss at those cycles of 32.5. The average of

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Kenneth E. Leone*, 46 ECAB 133 (1994).

<sup>4</sup> *Id.*

<sup>5</sup> *Stuart M. Cole*, 46 ECAB 1011 (1995).

<sup>6</sup> A.M.A., *Guides* 224 (4th ed. 1993).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 4.

32.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 7.5 decibels for the right ear which was multiplied by the established factor 1.5 to compute an 11.25 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 30, 40, 40 and 50 decibels respectively. These decibel losses were totaled at 160 decibels and divided by 4 to obtain the average hearing loss at those cycles of 40 decibels. The average of 40 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 15 decibels which was multiplied by the established factor 1.5 to compute a 22.5 percent loss of hearing for the left ear. The Office medical adviser then multiplied the 11.25 percent loss in the left ear (the ear with the lesser loss) by 5, added it to the 22.5 percent loss in the right ear (the ear with the greater loss) and divided the sum by 6 to calculate appellant's binaural hearing loss at 13.12 percent, which he rounded out to a 13 percent binaural loss.

The Board finds that the Office medical adviser applied the proper standards to the October 30, 1996 audiogram results and properly determined that appellant has a 13 percent binaural loss. Appellant has not submitted any evidence showing that his hearing loss exceeded that percentage.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 22, 1997 is affirmed.

Dated, Washington, D.C.  
September 8, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member