

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MICHAEL W. MAGEE and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 99-1893; Submitted on the Record;  
Issued August 25, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he has more than a seven percent binaural hearing loss for which he received a schedule award.

The Board finds that appellant has no more than a seven 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 members of the body that are listed in the schedule.<sup>1</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 of Workers' Compensation Programs.<sup>2</sup> However, as a matter of administrative practice the Board has stated, "For consistent results and to ensure equal justice under 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>3</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* (4<sup>th</sup> ed. 1993).<sup>4</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>5</sup> Then, the "fence" of 25 decibels is

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>4</sup> *George L. Cooper*, 40 ECAB 296, 302 (1988).

<sup>5</sup> A.M.A., *Guides*, 224-25 (4th ed. 1993).

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>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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 five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

On January 18, 1995 appellant, then a 42-year-old pipefitter, filed a claim alleging that he sustained an employment-related hearing loss. In October 1998, the Office accepted that appellant sustained a bilateral sensorineural hearing loss due to employment factors. By award of compensation dated December 15, 1998, the Office granted appellant a schedule award for a seven percent binaural hearing loss. The award ran for 14 weeks from September 8 to December 14, 1998.

On October 27, 1998 the Office medical adviser reviewed the otologic and audiologic testing performed on August 25, 1998 by Dr. Michael J. Bergstein, a Board-certified otolaryngologist, and applied the Office's standardized procedures to this evaluation.<sup>10</sup> Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 20, 40 and 75 respectively. These decibel losses were totaled at 150 decibels and were divided by 4 to obtain the average hearing loss of 37.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 12.5 which was multiplied by the established factor of 1.5 to compute a 19 percent hearing loss (rounded up from 18.75 percent) in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 25 and 55 respectively. These decibel losses were totaled at 110 decibels and were divided by 4 to obtain the average hearing loss of 27.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 2.5 which was multiplied by the established factor of 1.5 to compute a 4 percent hearing loss (rounded up from 3.75 percent) in the right ear. To compute the binaural hearing loss, the lesser loss in the right ear, 4 percent, was multiplied by the established factor of 5, added to the 19 percent loss in the left ear and this sum was divided by the established factor of 6 to calculate a 7 percent binaural hearing loss.<sup>11</sup>

---

<sup>6</sup> *Id.*

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

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

<sup>9</sup> *Donald A. Larson*, 41 ECAB 947, 951 (1990).

<sup>10</sup> Dr. Bergstein determined that appellant had an employment-related sensorineural hearing loss.

<sup>11</sup> The record contains audiograms from prior testing, but none of them show a binaural hearing loss of more than seven percent.

On appeal appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>12</sup> The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.<sup>13</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>14</sup> so appellant's award of compensation for a 7 percent binaural hearing loss entitled appellant to 200 weeks of compensation or 14 weeks of compensation. The record indicates that appellant has already received this amount of compensation. Because appellant has been fully compensated for binaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.<sup>15</sup>

The decision of the Office of Workers' Compensation Programs dated December 15, 1998 is affirmed.

Dated, Washington, D.C.  
August 25, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

---

<sup>12</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.304.

<sup>13</sup> 5 U.S.C. § 8107(c)(13)(b).

<sup>14</sup> 5 U.S.C. § 8107(c)(19).

<sup>15</sup> Dr. Bergstein recommended that appellant use binaural hearing aids. Appellant may wish to request authorization from the Office for use of such medical devices.