

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STANLEY J. SCHEPERS and DEPARTMENT OF THE ARMY,  
MISSOURI NATIONAL GUARD, Jefferson City, MO

*Docket No. 00-689; Submitted on the Record;  
Issued December 27, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he sustained more than a two percent permanent monaural (right ear) hearing loss for which he received a schedule award.

On April 14, 1999 appellant, then a 54-year-old mobile equipment repairer/inspector, filed a notice of occupational disease, Form CA-2, alleging that he sustained bilateral hearing loss in the course of his federal employment. Appellant indicated that he first became aware of his hearing loss in 1986 and related it to his employment in September 1998. On the reverse side of the CA-2 form, the employing establishment indicated that appellant had not stopped working and was last exposed to the conditions alleged to have caused his condition on April 14, 1999.

Accompanying the claim form, the employing establishment submitted appellant's statement regarding his employment history, any previous hearing problems, any medical treatment for hearing problems and a history of noise exposure; and the employing establishment's records of audiometric test results covering the period November 6, 1984 to June 1, 1998 and an audiogram dated September 28, 1995.

The Office of Workers' Compensation Programs referred appellant to Dr. James Rea, a Board-certified otolaryngologist, for examination and evaluation of medical records. Dr. Rea reported the findings of his audiologic and otologic evaluation of appellant on June 30, 1999 and concluded that appellant suffered a noise-induced bilateral moderate sloping high frequency hearing loss as a result of continued noise exposure at work.

In a July 14, 1999 report, an Office medical adviser applied the standards of the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), to the findings of Dr. Rea to determine that appellant had a two percent hearing loss of the right ear and no ratable hearing loss of his left ear.

In a decision dated October 8, 1999, appellant was awarded a two percent hearing loss in the right ear. The award ran from June 30 to July 7, 1999 for a total of 1.04 weeks.

The Board finds that appellant has no more than a two percent monaural (right ear) hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act 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>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.<sup>2</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>3</sup>

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels 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 since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>4</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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 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>5</sup> The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award proposes.<sup>6</sup>

To determine the nature and extent of hearing loss, the Office referred appellant to Dr. Rea, a Board-certified otolaryngologist. Following audiological and otological evaluations, Dr. Rea concluded on June 30, 1999 that appellant had sustained a noise-induced bilateral moderate sloping high frequency loss of hearing due to his exposure to noise at work.

The Office medical adviser applied the Office's standardized procedures to the audiogram performed for Dr. Rea. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses at 5, 15, 30 and 55, respectively. These decibels were totaled at 105 and were divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25, which was multiplied by the

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<sup>1</sup> 5 U.S.C. § 8107.

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

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

<sup>4</sup> A.M.A., *Guides* 224.

<sup>5</sup> *Id*; see also *Danniel C. Goings*, *supra* note 2 at 784.

<sup>6</sup> *Danniel C. Goings*, *supra* note 2; *Richard Beggs*, *supra* note 2.

established factor of 1.5 to compute a 1.875 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 5, 10, 25 and 45, respectively. These decibels were totaled at 85 and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser properly determined that appellant has a two percent hearing loss of his right ear and the Office properly granted appellant a schedule award of a two percent hearing loss of his right ear.<sup>7</sup>

On appeal, appellant contends that the schedule award he received was not adequate compensation for his monaural hearing loss. The schedule award provisions of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>8</sup> The Act establishes a maximum of 52 weeks of compensation as the award for total monaural hearing loss.<sup>9</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>10</sup> so appellant's award of compensation for a 2 percent monaural hearing loss entitles him to 2 percent of 52 weeks of compensation, or 1.04 weeks of compensation, the amount appellant received. Appellant is entitled to no more under the Act.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided in Dr. Rea's report dated June 30, 1999 and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss in the left ear and a two percent hearing loss in the right ear.

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<sup>7</sup> The Office rounded the 1.875 percent up to 2 percent; *see* FECA Program Memorandum No. 49 (issued May 1, 1967); *see also* Federal Procedure Manual (FECA), Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

<sup>8</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.404.

<sup>9</sup> 5 U.S.C. § 8107(c)(13)(A).

<sup>10</sup> 5 U.S.C. § 8107(c)(19).

The decision of the Office of Workers' Compensation Programs, dated October 8, 1999, is hereby affirmed.

Dated, Washington, DC  
December 27, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Valerie D. Evans-Harrell  
Alternate Member