

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE E. CHAPLIN and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Charleston, SC

*Docket No. 99-1423; Submitted on the Record;  
Issued July 7, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

The Board finds that appellant did not meet his burden of proof to establish that he has more than a four percent hearing loss in his right ear 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 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>

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 deducted

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<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 (4<sup>th</sup> ed. 1993).

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 losses.<sup>9</sup>

In the present case, the Office accepted in August 1998 that appellant, then a 50-year-old pipefitter worker, sustained a right monaural sensorineural hearing loss. By decision dated November 5, 1998, the Office granted appellant a schedule award for a four percent monaural sensorineural hearing loss in his right ear. The award ran for 2.08 weeks from July 13 to 27, 1998.

On August 5, 1998 the Office medical adviser reviewed the otologic and audiologic testing performed on July 13, 1998 by Dr. William R. Lomax, a Board-certified otolaryngologist to whom the Office referred appellant, and applied the Office's standardized procedures to this evaluation.<sup>10</sup> 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 10, 15, 20 and 65 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 loss 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 3.75 or, when rounded up, a 4.0 percent hearing loss in the right ear. 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 5, 5, 5 and 10 respectively. These decibel losses were totaled at 25 decibels and were divided by 4 to obtain the average hearing loss of 6.25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure which indicates that appellant does not have a ratable hearing loss in his left ear. The Board finds that the Office medical adviser properly used the appropriate standards of the A.M.A., *Guides* to

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<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> In his July 13, 1998 report, Dr. Lomax determined that appellant had an employment-related sensorineural hearing loss in his right ear.

calculate that appellant was entitled to a schedule award for a four percent hearing loss in his right ear.<sup>11</sup>

On appeal, appellant contends that the schedule award he received was not adequate compensation for his right monaural 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 52 weeks of compensation as the award for total monaural 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 4 percent right monaural hearing loss entitled appellant to 4 percent of 52 weeks of compensation, or 2.08 weeks of compensation. The record indicates that appellant has already received this amount of compensation. Because appellant has been fully compensated for the four percent right monaural 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.

The decision of the Office of Workers' Compensation Programs dated November 5, 1998 is affirmed.

Dated, Washington, D.C.  
July 7, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> Dr. Lomax indicated that appellant had a 7.2 hearing loss in his right ear, but he applied the standards of the American Academy of Otolaryngology rather than those of the A.M.A., *Guides*. The record contains several other audiograms but they do not show a right ear hearing loss greater than four percent and are not certified by physicians as being accurate.

<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).