

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOE DeLEON and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, TX

*Docket No. 98-2215; Submitted on the Record;  
Issued June 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained more than a two percent monaural hearing loss for which he received a schedule award.

On December 17, 1997 appellant, then a 40-year-old pneudraulic systems mechanic, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he first became aware of his illness on June 1, 1996. On the reverse of the form, the employing establishment indicated that appellant had not stopped work. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed by the employing establishment between April and February 1998 and documents indicating that appellant was exposed to loud noise at work.

By letter dated February 17, 1998, the Office of Workers' Compensation Programs referred appellant to Dr. Susan Marena, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Marena examined appellant on March 20 and April 9, 1998, and audiometric testing on his behalf was performed on March 10, 1998. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear: 25, 20, 30 and 30 decibels; left ear: 20, 20, 20 and 20 decibels. The audiogram results noted a calibration date of August 27, 1997.

In the April 9, 1998 report, Dr. Marena noted examination findings and diagnosed bilateral endolymphatic hydrops and an abnormal evoked auditory brainstem test. Additionally, she diagnosed moderate high frequency hearing loss in appellant's left ear and mild mid to high frequency hearing loss in appellant's right ear. Dr. Marena further opined that appellant's high frequency hearing loss was consistent with his history of noise exposure and his working environment.

The Office accepted the claim for binaural hearing loss. Appellant, thereafter filed a claim for a schedule award.

On May 17, 1998 an Office medical adviser reviewed the medical evidence of record and calculated a two percent monaural hearing loss.

By decision dated June 15, 1998, the Office granted appellant a schedule award for a two percent monaural loss of hearing, for 1.04 weeks' of compensation between March 10 and 17, 1998.

The Board finds that appellant sustained no more than a two percent monaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and the implementing federal regulations<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss of the members, functions and organs of the body listed in the schedule.<sup>3</sup> However, neither the Act nor the regulations specify the manner in 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.<sup>4</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>5</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*, using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.<sup>6</sup> The losses at each frequency are added and averaged. A "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 sounds under everyday listening conditions. 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 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977)

<sup>5</sup> *Danniel C. Goings*, *supra* note 4.

<sup>6</sup> A.M.A., *Guides*, 224, 225 (4th ed. 1993).

loss.<sup>7</sup> The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.<sup>8</sup>

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Marenda's April 9, 1998 report and the accompanying March 10, 1998 audiometric evaluation that Dr. Marenda reviewed. The Office medical adviser reviewed Dr. Marenda's report and audiogram performed on her behalf, and properly applied the Office's standardized procedures to the audiogram as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second at frequencies 25, 20, 30 and 30 respectively were totaled at 105 and divided by 4 to obtain the average hearing loss at those frequencies of 26.25. The average of 26.25 was reduced by the "fence" of 25 to obtain the average hearing loss at those frequencies at 1.25, which when multiplied by the established factor of 1.5 computed a 1.9 percent monaural loss of hearing for the right ear, which is rounded up to a 2 percent loss. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second frequencies, 20, 20, 20 and 20 respectively were totaled at 80 and divided by 4 to obtain the average hearing loss at those frequencies of 20, which was reduced to 0 when the "fence" of 25 decibels was subtracted.

The Board finds that the report and audiogram performed on behalf of Dr. Marenda constitute the most complete evaluation of record, and establish that appellant has no more than a two percent monaural loss of hearing for which he received a schedule award.

The Act's compensation schedule specifies a maximum of 52 weeks' of compensation payable for the total loss of hearing in one ear,<sup>9</sup> and the schedule compensates partial loss of hearing at a proportionate rate.<sup>10</sup> Therefore, compensation for a two percent monaural loss of hearing is two percent of 52 weeks, which the Office awarded to appellant in its June 15, 1998 schedule award decision. Accordingly, the Board finds that the Office properly followed its standardized procedures in evaluating appellant's permanent loss of hearing at two percent in the right ear and that the Office correctly applied schedule award compensation provisions in awarding appellant a total of 1.04 weeks' of compensation.<sup>11</sup>

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<sup>7</sup> See *Daniel C. Goings*, *supra* note 4.

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

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

<sup>10</sup> *Id.* § 8107(c)(19)

<sup>11</sup> On appeal, appellant asserts that his accepted condition resulted in a period of disability. However, the Board does not have jurisdiction over this issue as the record contains no decision of the Office adjudicating whether appellant sustained any disability due to his accepted condition; *see* 20 C.F.R. § 501.2(c). The Board only has jurisdiction over final decisions of the Office arising under the Act.

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

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

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member