

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOTERO YANEZ and DEPARTMENT OF THE AIR FORCE,
LAUGHLIN AIR FORCE BASE, TX

*Docket No. 99-164; Submitted on the Record;
Issued March 28, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent monaural loss of hearing, for which he received a schedule award.

In a decision dated September 11, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for a 15 percent monaural hearing loss of the right ear. The Office also indicated that a hearing aid was not authorized. This determination was based upon the August 30, 1997 calculation of the Office medical adviser, which in turn, was made on the basis of the November 18, 1996 audiological evaluation and report submitted by Dr. Bernard W. Palmer, a Board-certified otolaryngologist and an Office referral physician.¹ Dr. Palmer also provided a supplemental report dated August 8, 1997.² The Office awarded compensation for a period of 7.8 weeks, beginning on November 18, 1996 and continuing through January 11, 1997.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a 15 percent monaural hearing loss.

Section 8107 of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions

¹ Based on his November 18, 1996 evaluation, Dr. Palmer found that appellant had a mild bilateral sensorineural hearing loss due to noise exposure. He further noted that appellant had a 0 percent loss of hearing in his left ear and a 15 percent loss of hearing in his right ear. Dr. Palmer also indicated that appellant did not require a hearing aid.

² Because of an apparent misunderstanding as to whether the November 18, 1996 audiogram was administered by a certified audiologist, the Office referred appellant to Dr. Palmer for a second audiogram, which was administered on May 31, 1997. This latter audiogram revealed a markedly increased hearing loss than that demonstrated by the November 18, 1996 audiogram. In view of this discrepancy, the Office asked Dr. Palmer to provide information regarding the validity of the May 31, 1997. In his August 8, 1997 supplemental report, Dr. Palmer indicated that he placed greater faith in the results obtained by audiologist George Ybarra on November 18, 1996.

³ 5 U.S.C. § 8107.

and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Utilizing the hearing levels recorded at frequencies 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 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 conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁷ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁸

Appellant argues that he is entitled to a schedule award for a 21 percent binaural loss of hearing, as demonstrated by the May 31, 1997 audiogram. Although the May 31, 1997 audiogram revealed a greater hearing loss than the November 18, 1996 audiogram relied upon by the Office in calculating appellant’s schedule award, Dr. Palmer found that the November 18, 1996 audiogram was a more reliable indicator of the extent of appellant’s hearing loss. Moreover, the Office medical adviser reviewed the four most recent audiograms of record, which were administered between October 1995 and May 1997, and correctly noted that the May 31, 1997 audiogram was not in agreement with the majority of the audiograms of record. Based upon this observation and Dr. Palmer’s remarks, the Office medical adviser expressed the opinion that the November 18, 1996 audiogram should be relied upon in calculating appellant’s entitlement to a schedule award. Appellant has not provided any medical evidence to suggest that the May 31, 1997 audiogram is a more reliable indicator of the extent of his current hearing loss. As such, the Board finds no error with respect to the Office’s reliance on the November 18, 1996 audiogram.

In reviewing appellant’s November 18, 1996 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear revealed decibel losses of 25, 20, 30 and 65, respectively, for a total of 140 decibels. When this figure is divided by 4, the result is an average hearing loss of 35 decibels. The average loss of 35 is reduced by 25 decibels to equal 10, which when multiplied by the established factor of 1.5, results in a 15 percent monaural hearing loss for the right ear.⁹ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz

⁴ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁶ See A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁸ *Danniel C. Goings*, *supra* note 4.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September

revealed decibel losses of 20, 10, 25 and 45 decibels respectively, for a total of 100 decibels. Utilizing the same above-noted formula results in a zero percent monaural hearing loss for the left ear.¹⁰ Consequently, the reliable evidence of record does not establish that appellant has greater than a 15 percent monaural loss of hearing.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.¹¹ With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation.¹² In the instant case, appellant does not have a total, or 100 percent monaural hearing loss, but rather at most a 15 percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 15 percent loss of use of his right ear, he is entitled to 15 percent of the 52 weeks of compensation, which is 7.8 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

On appeal, appellant contends that his schedule award should commence on January 31, 1996; the date he first became aware of his condition, rather than November 18, 1996. While appellant's hearing loss may have initially manifested itself in January 1996, this is not a factor in determining the number of weeks of compensation he is entitled to under the Act. Appellant also requests that the Office authorize payment for a hearing aid. Dr. Palmer, however, specifically noted that appellant did not require a hearing aid, and the Office medical adviser concurred with this assessment. The Office, therefore, properly declined authorization of a hearing aid.

1994).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8107.

¹² 5 U.S.C. § 8107(c)(13)(A).

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 28, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member