

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE M. HALCON and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, San Diego, CA

*Docket No. 99-88; Submitted on the Record;
Issued May 25, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a greater than 18 percent binaural hearing loss for which he received a schedule award.

In a decision dated October 14, 1997, the Office of Workers' Compensation Programs granted appellant a schedule award for an 18 percent binaural hearing loss.¹ This determination was based upon the calculation of its medical adviser, which, in turn, was made on the basis of the June 26, 1997 audiogram evaluation and the August 4, 1997 report from Dr. Jeffrey P. Harris, a Board-certified otolaryngologist, to whom the Office referred appellant as an impartial medical examiner.² The period of the award ran from June 26, 1997 to March 4, 1998.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than an 18 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' compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.³ 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.⁴ However, as a

¹ The Office had previously authorized hearing aids.

² The Office medical adviser noted discrepancies between the speech thresholds and speech discrimination scores as noted by Dr. Shen Ye Wang based on a March 25, 1993 audiogram and Dr. Michael Morelock based on a June 29, 1994 audiogram.

³ 5 U.S.C. § 8107.

⁴ *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

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.”⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁶ 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.⁷ Then, the “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 speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹¹

The Office medical adviser applied the Office’s standardized procedures to the June 26, 1997 audiogram performed for Dr. Harris. Testing for the right ear revealed decibel losses of 25, 25, 30 and 55 respectively. These decibel losses were totaled at 135 and divided by 4 to obtain the average hearing loss at those cycles of 33.75. The average of 33.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 8.75 decibels for the right ear which was multiplied by the established factor 1.5 to compute an 13.1 percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 35, 40, 55 and 80 decibels respectively. These decibel losses were totaled at 210 decibels and divided by 4 to obtain the average hearing loss at those cycles of 52.5 decibels. The average of 52.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 27.5 decibels which was multiplied by the established factor 1.5 to compute an 41.2 percent loss of hearing for the left ear. To determine the binaural loss, the 13.1 percent loss of the right ear was multiplied by 5 to total 65.5, which was then added to the greater loss of the left ear of 41.2 to equal 106.7. This total was then divided by 6 to arrive at 17.7 which was rounded to 18 for a total binaural loss of 18 percent.

⁵ *Id.*

⁶ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁷ A.M.A., *Guides* 224-25 (4th ed. 1993).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had an 18 percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Harris' August 4, 1997 report and the accompanying June 26, 1997 audiometric evaluation that Dr. Harris reviewed. This resulted in a calculation of an 18 percent binaural hearing loss.

The decision of the Office of Workers' Compensation Programs dated October 14, 1997 is hereby affirmed.¹²

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² The Board notes that prior to appellant's request for an appeal of this decision, he filed a request for reconsideration with the Office. However, the Office did not process this request prior to the docketing of the present appeal. The Board further notes that appellant's request for a review of the written record was denied by the Office on September 23, 1998 as untimely filed. Appellant withdrew his request for a review of the record via telephone call on September 21, 1998.