

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN C. ELIZONDO and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX

*Docket No. 99-224; Submitted on the Record;
Issued May 17, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant is entitled to more than four weeks of compensation for his employment-related hearing loss; and (2) whether he is entitled to an additional schedule allowance for the condition of tinnitus.

The Board has duly reviewed the record on appeal and finds that appellant is entitled to more than four weeks of compensation for his employment-related hearing loss.

A medical adviser to the Office of Workers' Compensation Programs applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to the hearing threshold levels obtained by Dr. Anthony P. Sertich, Jr., on June 14, 1996. Testing of the right ear at 500, 1,000, 2,000 and 3,000 hertz showed decibel losses of 5, 5, 15 and 65 respectively. Testing of the left ear at those same frequencies showed decibel losses of 5, 5, 35 and 80 respectively. The medical adviser determined that this testing revealed a monaural loss of 0 percent in the right ear and 9.375 percent in the left, or a binaural loss of 1.6 percent according to the A.M.A., *Guides*.

On August 19, 1996 the Office issued a schedule award for a two percent permanent impairment of both ears. In a decision dated December 11, 1997, an Office hearing representative affirmed.

The Office medical adviser properly determined that testing on June 14, 1996 revealed a monaural loss of 0 percent in the right ear and 9.375 percent in the left or a binaural loss of 1.6 percent. The issue for determination, however, is whether appellant should receive a schedule award for monaural or binaural impairment.

The schedule award provision of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be awarded for loss of hearing. For complete loss of hearing in one ear (monaural), the Act provides for 52 weeks of compensation. For complete

loss of hearing in both ears (binaural), the Act provides for 200 weeks of compensation.¹ Compensation for partial loss is compensated at a proportionate rate.² Thus, a nine percent monaural impairment³ would entitle appellant to 4.68 weeks of compensation, while a two percent binaural impairment would entitle him to four weeks, which the Office awarded.

The Board has held that, where a claimant has a ratable hearing loss in only one ear, the record will not support an award based on a binaural hearing loss. This is especially important where, as here, the allowance for monaural hearing loss would be greater than that for a binaural loss. In such cases, the employee should be given the benefit of the more favorable allowance and should be compensated based on the sum of the monaural impairments.⁴

In the present case, the Office did not give appellant the benefit of the more favorable allowance. Moreover, hearing threshold levels obtained on September 3, 1996 by Dr. Marshall D. Nathan show a hearing loss of zero percent in the right ear and one percent in the left. While this also supports four weeks of compensation for a 2 percent binaural impairment, it also supports 5.72 weeks of compensation for a monaural impairment of 11 percent in the left ear. On remand the Office also should explain why it is selecting the audiogram results from one physician over another physician. The Board will set aside the Office's December 11, 1997 decision and remand the case for the issuance of a schedule award in accordance with the more favorable allowance supported by the medical evidence of record.⁵

The Board also finds that appellant is entitled to no additional schedule allowance for the condition of tinnitus.

No schedule award is payable for the permanent loss of use of the cochlea and the hair cells of the inner ear *per se*, as these are not specified organs of the body under the schedule provisions of the Act. A claimant may effectively receive a schedule award for tinnitus, however, to the extent that such a condition reflects itself in a permanent and ratable loss of hearing.⁶ Where hearing threshold levels are properly obtained and the claimant's permanent

¹ 5 U.S.C. § 8107(c)(13).

² *Id.* § 8107(c)(19).

³ Percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2) (September 1994).

⁴ *Sheldon H. Pellow*, 33 ECAB 148 (1981); see FECA Program Memorandum 181 (issued November 26, 1974).

⁵ *Joseph J. Tillo*, 39 ECAB 1345 (1988).

⁶ *Charles Joseph Kellerman*, 32 ECAB 333 (1980); *John T. Bradley*, 25 ECAB 348 (1974).

impairment is properly determined under the A.M.A., *Guides*, no additional schedule allowance is payable.⁷

The December 11, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case record remanded for further action consistent with this opinion.

Dated, Washington, D.C.
May 17, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that Dr. Sertich, the Office referral physician, recommended hearing aids for tinnitus control. The Office medical adviser also supported authorization for a hearing aid. The Office's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends. Trial or rental periods should be encouraged as many persons do not find their use satisfactory. Maintenance of hearing aids provided by the Office, including batteries, repairs and replacements, may be authorized as needed. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(2) (October 1995).