

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES NEAL and DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD YARD, Curtis Bay, MD

*Docket No. 00-206; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a nine percent binaural hearing loss for which he received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that appellant has no more than a nine percent binaural hearing loss for which he received a schedule award.

The Office of Workers' Compensation Programs properly considered the medical evidence in support of appellant's claim and applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ in calculating appellant's permanent impairment for loss of hearing. Thereafter, on November 30, 1998, the Office issued appellant a schedule award for a nine percent binaural hearing loss.

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* (fourth edition 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.² The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.³ The binaural loss is determined by calculating the loss in each ear using the

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* 224 (4th ed. 1993); see *Daniel C. Goings*, 37 ECAB 781 (1986) (where the Board concurred in the Office's use of the standards set forth in the A.M.A., *Guides* in evaluating hearing loss for schedule award purposes).

² *Jimmy B. Newell*, 39 ECAB 181 (1987).

³ A.M.A., *Guides* at 224.

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.⁴

After appellant filed his occupational disease claim for hearing loss, the Office referred appellant to Dr. Young Cheol Shin, a Board-certified otolaryngologist. In a September 2, 1998 report, Dr. Shin opined that appellant sustained noise-induced sensorineural hearing impairment in both ears. Accompanying Dr. Shin's report was a September 11, 1998 audiogram, performed on the doctor's behalf. Based on this, the Office accepted that appellant had an employment-related bilateral hearing loss. An Office medical adviser, in an October 19, 1998 report, calculated permanent impairment based on the audiogram performed for Dr. Shin.

The audiogram performed for Dr. Shin revealed the following decibel losses for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz: 25, 30, 20 and 45 decibels respectively, for a total of 120 decibels. When this figure, utilizing the above-noted formula, is divided by 4, the result is an average hearing loss of 30 decibels. The average loss of 30 is reduced by 25 decibels to equal 5, which when multiplied by the established factor of 1.5, results in a 7.5 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 30, 30, 40 and 45 decibels respectively, for a total of 145 decibels. Utilizing the same above-noted formula results in a 16.87 percent monaural hearing loss for the left ear. To obtain the binaural hearing loss, the 7.5 percent hearing loss for the right ear is multiplied by 5, to obtain the total of 37.5. The 37.5 is then added to the 16.87 percent hearing loss for the left ear to obtain the total of 54.37. The 54.37 is then divided by 6, in order to calculate a binaural loss of hearing of 9.06 percent which the Office properly rounded down to 9 percent.⁵ Consequently, the evidence does not establish that appellant has greater than a nine percent binaural hearing loss, for which he received a schedule award.⁶

The schedule award provisions of the Federal Employees' Compensation Act specify the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.⁷ As appellant has a 9 percent binaural loss of hearing, he is entitled to 9 percent of 200 weeks which is 31.20 weeks. The Office properly determined the number of weeks of compensation for which appellant is entitled under the schedule award provisions of the Act.⁸

⁴ *Id.*

⁵ See *Donald C. Swiger*, 50 ECAB ____ (Docket No. 97-2809, issued July 8, 1999).

⁶ There is no audiogram of record, certified by a physician, which shows a greater hearing loss; see *Joshua A. Holmes*, 42 ECAB 231 (1990).

⁷ 5 U.S.C. § 8107(13).

⁸ On appeal, appellant also contends that he should be entitled to a hearing aid. While the Office medical adviser who reviewed Dr. Chin's report and calculated the schedule award recommended that a hearing aid be authorized, this matter is not presently before the Board as the Office has not issued a decision with regard to hearing aids; see 20 C.F.R. § 501.2(c).

The Board notes that the record contains a decision dated November 19, 1999 with respect to appellant's request for review of the written record. Since this decision was issued after appellant filed an appeal and is on the same issue before the Board, it is null and void.⁹

The November 30, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 2, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁹ It is well established that the Board and the Office may not have concurrent jurisdiction over the same issue in the same case and those Office decisions, which change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). It is also noted that the Board's jurisdiction is limited to review of evidence that was before the Office at the time of the final decisions on appeal; any evidence submitted after November 30, 1998 cannot be considered on this appeal. 20 C.F.R. § 501.2(c).