

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISAAC WHITE, III and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-1702; Submitted on the Record;
Issued November 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant is entitled to a schedule award for an accepted psychiatric condition; and (2) whether appellant is entitled to a greater than 56 percent binaural hearing loss for which he received a schedule award.

On November 7, 1980 appellant, then a 47-year-old instrument mechanic, filed an occupational disease claim alleging that his binaural hearing loss was employment related which was accepted by the Office of Workers' Compensation Programs.

On October 19, 1984 the Office issued appellant a schedule award for a 56 percent binaural loss of hearing.

On November 18, 1984 appellant filed a claim alleging that his depressive neurosis and anxiety was due to his accepted employment-related hearing loss, which the Office accepted on November 23, 1985.

Appellant filed a recurrence claim for disability commencing on May 25, 1986. The Office accepted the claim and placed appellant on the periodic rolls for temporary total disability effective January 28, 1987.¹

In an August 18, 1998 audiological report, Ms. Lisa Bevill, an audiologist, reported a 48 percent binaural hearing impairment based upon his audiological examination and attached the report.

On September 15, 1998 appellant filed a claim for a schedule award.

¹ Appellant was terminated from the employing establishment due to physical inability to perform his job effective May 1, 1987. On September 5, 1987 appellant elected to be paid compensation under the Federal Employees' Compensation Act.

In a letter dated September 24, 1998, the Office advised appellant that schedule awards were not payable for mental dysfunction as the Act contained no provision for compensation for a psychiatric condition or for the brain. The Office also advised appellant that if he was applying for an award on his hearing loss, that he had already been issued an award for a 56 percent binaural hearing loss and the evidence did not establish that he was entitled to more.

By decision dated March 25, 1999, the Office responded to appellant's March 15, 1999 telephone inquiry by attaching the September 24, 1998 letter with appeal rights.

The Board finds that appellant is not entitled to receive a schedule award for an accepted psychiatric condition.

Under section 8107 of the Act² and section 10.404 of the implementing regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, there is no provision under the Act or its implementing regulations entitling a claimant to a schedule award for an accepted psychiatric condition. In this case, the Office accepted that appellant sustained major depression causally related to factors of his federal employment. The Office has accepted that appellant sustained a hearing loss as enumerated under the schedule award provisions of the Act and awarded benefits based on that loss. Therefore, appellant is not entitled to a schedule award for his accepted psychiatric condition as this is not a covered function.

The Board further finds that appellant has no more than a 56 percent binaural hearing loss for which he received a schedule award.

The schedule award provision of the Act set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.⁴ 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.⁵ 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."⁶

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, hearing loss is evaluated by determining decibel losses at the frequency levels of 500, 1,000, 2,000 and 3,000 (Hz). The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted, since, as the A.M.A., *Guides* points out, losses below 25

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 5 U.S.C. § 8107.

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

⁶ *Id.*

decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁷ 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 the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸

In the instant case, appellant submitted an August 18, 1998 audiological report which stated that he had a 48 percent binaural hearing loss. Appellant had previously been issued an award for a 56 percent binaural hearing loss. As appellant has received a schedule award for a larger hearing loss than that indicated on his August 18, 1998 audiological report, appellant is not entitled to any additional amount.

The decision of the Office of Workers' Compensation Programs dated March 25, 1999 is hereby affirmed.

Dated, Washington, DC
November 20, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁷ A.M.A., *Guides* at 224.

⁸ *Id*; see also *Daniel C. Goings*, 37 ECAB 781, 784 (1986).