

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. MICHAEL and TENNESSEE VALLEY AUTHORITY,
COLBERT FOSSIL PLANT, Tuscumbia, AL

*Docket No. 00-487; Submitted on the Record;
Issued October 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he sustained more than an 87 percent permanent binaural hearing loss for which he received a schedule award.

In a decision dated August 12, 1999, the Office of Workers' Compensation Programs awarded appellant a schedule award for an 87 percent binaural hearing loss.¹ This determination was based upon the July 16, 1999 calculation of the Office medical adviser who based his calculation on the report and October 20, 1998 audiological evaluation by Dr. F. Allen Long, a Board-certified otolaryngologist and an Office referral physician. The Office awarded compensation for a period of 174 weeks, beginning on October 20, 1998 and continuing through February 18, 2002.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than an 87 percent binaural hearing loss, for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions 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.³ To ensure consistent results and equal

¹ Appellant's claim had previously been accepted for sensorineural hearing loss on May 15, 1998.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁴

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 (Hz), the losses at each frequency are added up and averaged and a “fence” of 25 decibels (dBs) is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions.⁵ 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.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

In reviewing Dr. Long’s October 20, 1998 audiogram, the frequency levels of 500, 1,000, 2,000 and 3,000 Hz for the right ear revealed dBs losses of 75, 80, 90 and 90, respectively. These dBs were totaled at 335 and were divided by 4 to obtain the average hearing loss at those cycles of 83.75 dBs. The average of 83.75 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 58.75 which was multiplied by the established factor of 1.5 to compute a 88.13 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dBs losses of 75, 75, 85 and 95, respectively. These dBs were totaled at 330 and were divided by 4 to obtain the average hearing loss at those cycles of 82.50 dBs. The average of 82.50 dBs was then reduced by 25 dBs (as explained) to equal 57.50 which was multiplied by the established factor of 1.5 to compute an 86.25 percent loss of hearing for the left ear. The amount of the left ear (the better ear), 86.25 was multiplied by 5 and added to the amount for the right ear, 88.13 which totaled 519.38. The 519.38 was then divided by 6 to arrive at the percentage of binaural hearing loss. Accordingly, pursuant to the Office’s standardized procedures, the Office medical adviser properly determined that appellant sustained an 87 percent binaural hearing loss, for which he received a schedule award.

On appeal, appellant asked why payment of compensation could not continue for the rest of his life.

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.⁸ With respect to the

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁵ A.M.A., *Guides*, 224.

⁶ *Id.*; see also *Danniel C. Goings*, *supra* note 4 at 784.

⁷ *Danniel C. Goings*, *supra* note 3.

⁸ 5 U.S.C. § 8107.

schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent, loss of hearing in both ears an employee shall receive 200 weeks' compensation.⁹ In the instant case, appellant does not have a total, or 100 percent binaural hearing loss, but rather an 87 percent binaural hearing loss, which the Office has determined was employment related. As appellant has an 87 percent loss of use of both ears, he is entitled to 87 percent of the 200 weeks of compensation, which is 174 weeks. The Office, therefore, properly determined the number of weeks of compensation, to which appellant is entitled under the Act.

The August 12, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 24, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁹ 5 U.S.C. § 8107(c)(13)(B).