

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNALDO R. LICHTENBERGER, and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 01-381; Submitted on the Record;
Issued August 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 4, 1993 appellant, then a 49-year-old engine examiner, filed an occupational disease claim alleging that he sustained hearing loss in both ears, which he attributed to noise exposure in the course of his federal employment. The Office of Workers' Compensation Programs accepted the claim, assigned file number A16-0355825, for binaural hearing loss. By decision dated December 10, 1993, the Office denied appellant's claim for a schedule award on the grounds that his hearing loss was not ratable.

On June 13, 2000 appellant filed another occupational disease claim for noise-induced hearing loss. He indicated that he had continued to be exposed to noise in the course of his federal employment.¹

On June 30, 2000 the Office referred appellant to Dr. Michael Mintz, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Mintz obtained an audiogram on July 31, 2000 and, in a report dated August 4, 2000, found that appellant had noise-induced high frequency sensorineural hearing loss causally related to his exposure to noise in the course of his federal employment. He recommended a high quality hearing aid.

Upon review of the audiogram and Dr. Mintz' August 4, 2000 report, an Office medical adviser determined that appellant had a four percent binaural loss of hearing. He further found that appellant was entitled to a hearing aid.

By decision dated October 26, 2000, the Office granted appellant a schedule award for a four percent binaural loss of hearing. The period of the award ran from July 31 to September 24, 2000 for a total of eight weeks of compensation.

¹ The Office combined the two cases under file number A16-0355825.

The Board finds that appellant is entitled to a schedule award for a 2 percent loss of hearing in his left ear and a 17 percent loss of hearing in his right ear.

The schedule award provisions of the Federal Employees' Compensation Act,² and its implementing federal regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the A.M.A., *Guides*, the losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps) are added up, averaged and the "fence" of 25 decibels (dBs) is deducted.⁶ 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 aforementioned formula for monaural loss. The lesser loss is then multiplied by five and added to the greater loss. This amount is then divided by six to arrive at the total binaural hearing loss.⁷

The Office medical adviser applied the Office's standardized procedures to the July 31, 2000 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dBs losses of 25, 15, 40 and 65, respectively. These dBs were totaled at 145 and divided by 4 to obtain the average hearing loss of 36.25 decibels. The average loss was reduced by the 25 dBs fence to equal 11.25, which was multiplied by the established factor 1.5 to compute a 16.9 percent monaural loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed losses of 15, 25, 15 and 50 dBs, respectively. These decibels were totaled at 105 and divided by 4 to obtain the average hearing loss of 26.25 dBs. The average loss was reduced by the 25 dBs fence to equal 1.25, which was multiplied by the established factor 1.5 to compute a 1.9 percent monaural loss for the left ear. The Office medical adviser then multiplied the 1.9 percent loss in the left ear (the ear with the lesser loss) by 5, added it to the 16.9 percent loss in the right ear (the ear with the greater loss) and divided the sum by 6 which equals 4.4, which he rounded down to 4 percent in accord with Office procedures.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 20 C.F.R. § 10.404.

⁵ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁶ The A.M.A., *Guides* states that a loss below an average of 25 dBs is deducted as it does not result in an impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* at 224.

⁷ *Id.*

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.⁸ Since the binaural hearing loss in this case is 4 percent, appellant would be entitled to 4 percent of 200 weeks or 8 weeks of compensation. The Office's October 26, 2000 decision awarded appellant eight weeks of compensation for a four percent binaural hearing loss.

It is well established, however, that if calculations based on the monaural hearing loss would result in greater compensation, then the monaural hearing loss calculations should be used.⁹ The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks.¹⁰ The Office medical adviser found that the hearing loss in the right ear was 1.9 percent and in the left ear was 16.9 percent. Using the Office procedure of rounding to the next whole number, the monaural losses are 2 percent and 17 percent.¹¹ Two percent of 52 weeks is 1.04 weeks of compensation and 17 percent of 52 weeks is 8.84 weeks of compensation, resulting in a total of 9.88 weeks of compensation. As this is more than the 8 weeks of compensation for binaural hearing loss, the Office should have issued the schedule award for a 2 percent hearing loss in the left ear and a 17 percent hearing loss in the right ear. The Board, therefore, finds that appellant is entitled to an additional 1.88 weeks of compensation.

The decision of the Office of Workers' Compensation Programs dated October 26, 2000 is affirmed as modified.

Dated, Washington, DC
August 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ 5 U.S.C. § 8107 (c)(13)(B).

⁹ FECA Program Memorandum No. 181 (issued November 26, 1974). *See Joseph J. Tillo*, 39 ECAB 1345, 1348 (1988).

¹⁰ 5 U.S.C. § 8107(c)(13)(A).

¹¹ FECA Program Memorandum No. 49 (issued May 1, 1967). According to this memorandum, half is rounded up to the nearest whole number. *See Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700.4(b)* (November 1998).