

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH ACZON and DEPARTMENT OF THE AIR FORCE,
HICKAM AIR FORCE BASE, Honolulu, HI

*Docket No. 01-781; Submitted on the Record;
Issued December 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained greater than a 10 percent permanent binaural hearing loss for which he received a schedule award.

On February 17, 1999 appellant, then a 61-year-old refrigeration mechanic, filed a notice of occupational disease and claim for compensation alleging that he sustained bilateral hearing loss caused by factors of his employment and that he became aware that this was causally related to his employment in 1990.¹

By letters dated March 11, 1999, the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Meredith K. Pang, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

In a report dated April 16, 1999, Dr. Pang noted findings on audiologic evaluation based on an April 13, 1999 University of Hawaii audiogram and explained that she felt this best reflected appellant's present threshold hearing levels. Based on these findings, Dr. Pang concluded that appellant had a hearing loss of 0 percent in his right ear and 1.9 percent in his left ear, which amounted to a 0.3 percent binaural hearing loss and a loss of the whole person of 0 percent.

In a memorandum dated July 23, 1999, an Office medical adviser, relying on the University of Hawaii audiogram and Dr. Pang's calculations determined that at the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 20, 20, 25 and 30 decibels: left ear -- 15, 25, 30 and 35 decibels. He concurred with Dr. Pang and found that appellant had a zero percent loss in his right ear and 1.9 percent loss in his left ear, which was equal to a two percent monaural loss in the left ear. He also advised that a hearing aid was authorized.

¹ Appellant retired on December 31, 1999.

In a decision dated September 1, 1999, the Office issued a schedule award for a two percent monaural loss of hearing in the left ear. The period of the award was from April 13 to 20, 1999.

By letter dated September 19, 1999, appellant requested an examination of the written record. He enclosed additional copies of hearing reports, which the employing establishment recently forwarded and were not previously of record.

In a February 8, 2000 decision, the hearing representative set aside the prior decision and found that appellant had provided sufficient medical evidence to propel the Office to develop the record. He found that the Office's second opinion specialist, Dr. Pang, should review the additional medical reports and determine whether the evidence supported a higher schedule award than previously awarded.

In a March 6, 2000 request, the Office forwarded the additional materials to Dr. Pang and requested that she review them and determine whether an additional award was in order.

In a March 12, 2000 report, Dr. Pang explained the reason for her selection of the April 1999 audiogram as opposed to any of the others and explained that she believed it was the most accurate audiogram at the time of her examination. She did not offer any further determination.

In an April 24, 2000 memorandum, the Office medical adviser reviewed the medical evidence of record including Dr. Pang's March 12, 2000 report and determined that a reexamination by an otolaryngologist was in order to determine an accurate and reliable threshold of hearing.

By letters dated June 14, 2000, the Office referred appellant and a statement of accepted facts to Dr. Hugh Norman Hazenfield, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation.

In a July 16, 2000 report, Dr. Hazenfield, noted that audiometric testing was performed on that date and due to inconsistent responses during the testing in his office, repeat audiograms were performed on July 12, 2000 by Audiology Associates Hawaii and again on July 14, 2000 because the July 12, 2000 report did not have bone conduction thresholds. He explained that he was using the July 14, 2000 report because it contained the bone conduction thresholds and they were consistent with the earlier tests. Dr. Hazenfield found that the monaural hearing impairment in the right ear was 9.4 percent and the left ear was 11.2 percent for a binaural hearing impairment of 9.7 percent with 3 percent whole person impairment.

On August 30, 2000 the Office medical adviser reviewed the medical evidence of record, including the July 16, 2000 report from Dr. Hazenfield, and calculated appellant's percentage of hearing loss as a 9.4 percent of loss in the right ear and an 11.3 percent loss in the left ear for a 10 percent binaural hearing loss.

On October 10, 2000 the Office granted appellant a schedule award for an additional impairment of an 8 percent binaural hearing loss for the period from July 14, 2000 to November 2, 2000, for a total of 16 additional weeks of compensation.²

The Board finds that appellant did not meet his burden of proof to establish that he sustained greater than a 10 percent permanent binaural hearing loss for which he received a schedule award.

The Federal Employees' Compensation Act³ schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then the "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 speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural hearing 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, the Office medical adviser applied the Office's standardized procedures to the July 14, 2000 audiogram. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 25, 35 and 50 respectively. These decibel losses were totaled to 130 decibels and were divided by four to obtain the average hearing loss of 32.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 7.5, which was multiplied by the established factor of 1.5 to compute an 11.3 percent monaural hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 25, 35 and 45 respectively. These decibel losses were totaled at 125 decibels and were divided by four to obtain the average hearing loss of 31.25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to

² In the instant case, the record reflects that the Office incorrectly determined that a two percent schedule award of monaural hearing loss for the left ear was the same as binaural hearing loss. The Office merely subtracted the previously award of 2 percent to the left ear from the 10 percent binaural hearing loss instead of calculating the correct number of weeks.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ A.M.A., *Guides*, 224-25 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

equal 6.25 which was multiplied by the established factor of 1.5 to compute a 9.4 percent monaural hearing loss in the right ear. The Office medical adviser then multiplied the lessor loss of 9.4 percent in the right ear by 5, added this figure to the greater loss of 11.3 and divided the total by 6 to arrive at a 10 percent binaural hearing loss. The Board finds that the Office medical adviser properly used the appropriate standards of the A.M.A., *Guides* to calculate that appellant was entitled to a schedule award for no greater than a 10 percent binaural hearing loss.

However, the schedule award provisions of the Act specify the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.⁹ The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.¹⁰ A partial loss of hearing is compensated at a proportionate rate,¹¹ so appellant's award of compensation for a 10 percent binaural hearing loss entitled appellant to 200 weeks of compensation or 20 weeks of compensation. The record reflects that appellant initially received 1.04 weeks of compensation and was awarded another 16 weeks of compensation for a total of 17.04 weeks. As appellant received an award for a 10 percent binaural hearing loss or 20 weeks of compensation, the Board finds that appellant is entitled to an additional 2.96 weeks of compensation.

The decision of the Office of Workers' Compensation Programs dated October 10, 2000 is hereby affirmed as modified.

Dated, Washington, DC
December 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁹ 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.404.

¹⁰ 5 U.S.C. § 8107(c)(13), (b).

¹¹ 5 U.S.C. § 8107(c)(19).