

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. CUNNINGHAM and TENNESSEE VALLEY AUTHORITY,
COLBERT FOSSIL PLANT, Tuscumbia, AL

*Docket No. 00-1191; Submitted on the Record;
Issued February 23, 2001*

DECISION and ORDER

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

The issue is whether appellant has more than a 20 percent binaural loss of hearing, for which he received a schedule award.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated December 28, 1999 and finalized December 30, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ Section 8107 of the Federal Employees' Compensation Act, 5 U.S.C. § 8107, sets forth the number of weeks of compensation to be paid for 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 shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses, and the Board has concurred in such adoption. *James J. Hjort*, 45 ECAB 595 (1994). Appellant has failed to provide any probative medical evidence that he has greater than a 20 percent binaural hearing loss. The Act provides that, for a total, or 100 percent loss of hearing in both ears, an employee shall receive 200 weeks of compensation. 5 U.S.C. § 8107(c)(13)(B). As appellant does not have a total, or 100 percent binaural hearing loss, but rather a 20 percent binaural hearing loss, he is entitled to 20 percent of the 200 weeks of compensation, which is 40 weeks.

The December 30, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.²

Dated, Washington, DC
February 23, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its December 30, 1999 decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).