

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN A. MORGAN and DEPARTMENT OF THE ARMY,  
CAMP SHELBY, Jackson, MI

*Docket No. 00-2320; Submitted on the Record;  
Issued June 13, 2001*

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DECISION and ORDER

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

The issue is whether appellant has established a bilateral hearing loss or that he has greater than an 11 percent permanent hearing loss of the left ear, for which he received a schedule award.

On November 10, 1999 appellant, a 41-year-old heavy mobile equipment mechanic leader, filed a claim for benefits, alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware he had sustained a hearing loss on March 15, 1986.

On February 11, 2000 the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Michael Brooks, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the February 29, 2000 audiogram for Dr. Brooks noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 5, 20, 30 and 40 decibels: left ear -- 15, 20, 40 and 55 decibels. In an undated report, Dr. Brooks reviewed the audiogram and concluded that appellant's hearing test showed a binaural noise-induced sensorineural hearing loss due to a history of noise exposure, although his findings indicated that appellant had a zero percent hearing loss in his right ear.

By decision dated June 21, 2000, the Office awarded appellant a schedule award of compensation for an 11 percent permanent hearing loss of the left ear. This determination was based upon the calculation of its medical adviser, which, in turn, was made on the basis of the February 29, 2000 audiogram evaluation and the undated report submitted by Dr. Brooks. The period of the award ran from February 29 to April 9, 2000 and for 5.72 weeks of compensation.

The Board finds that appellant has not established a bilateral hearing loss and that he has no more than an 11 percent permanent hearing loss of the left ear, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and the implementing federal regulations<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.<sup>3</sup> However, neither the Act nor the regulations specify the manner in 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.<sup>4</sup> To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>5</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged. Then a "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 sounds under everyday conditions.<sup>6</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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.<sup>7</sup> The Office by regulations adopted this standard for evaluating hearing loss.<sup>8</sup>

The Office medical adviser applied the Office's standardized procedures to the February 29, 2000 audiogram performed for Dr. Brooks. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses of 5, 20, 30 and 40 respectively. These decibels were totaled to 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent in the right ear. Thus, testing for the right ear

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>4</sup> *Id.*

<sup>5</sup> *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>6</sup> See A.M.A., *Guides* page 224 (4<sup>th</sup> ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335 (1974); *Terry A. Wethington*, 25 ECAB 247 (1974).

<sup>7</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

<sup>8</sup> 20 C.F.R. § 10.404 (1999).

revealed a nonratable hearing loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 20, 40 and 55 respectively. These decibels were totaled at 130 and were divided by 4 to obtain the average hearing loss at those cycles of 32.50 decibels. The average of 32.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 7.50, which was multiplied by the established factor of 1.5 to compute an 11.25 percent loss in the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office's medical adviser and the consulting audiologist determined that appellant had an 11 percent hearing loss in appellant's left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings as stated in Dr. Brooks' undated report and the accompanying February 29, 2000 audiogram performed on his behalf. This resulted in a nonratable hearing loss for the right ear and calculation of an 11 percent hearing loss of the left ear as set forth above. The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant had a nonratable right ear hearing loss and no more than an 11 percent permanent hearing loss of use of his left ear, for which he has received a schedule award from the Office. Appellant failed to provide probative, supportable medical evidence that he has greater than the 11 percent impairment already awarded.

The June 21, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 13, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member