

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEDRO AGUSTIN and DEPARTMENT OF THE NAVY,
PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

*Docket No. 01-2110; Submitted on the Record;
Issued April 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a nine percent monaural hearing loss in his left ear for which he received a schedule award.

The Board has reviewed the case record in the current appeal and finds that appellant has no more than a nine percent monaural hearing loss in his left ear for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 to 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 regulations as the appropriate standard for evaluating schedule losses.³

The Office of Workers' Compensation Programs evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.⁴ The losses at each frequency are added and averaged. A "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

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

decibels result in no impairment in the ability to hear everyday sounds under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural (one ear) hearing loss. The binaural (both ears) 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 loss and the amount of weeks of compensation is calculated pursuant to the weeks listed under the Act.⁵ The Board notes further that Office procedures require for reliability purposes, the date of calibration of the audiogram equipment, a certification of reliability, as well as speech reception thresholds and auditory discrimination scores to ensure reliable results.⁶

In this case, the Office accepted that appellant sustained a bilateral hearing loss while in the performance of duty. Appellant then filed a claim for a schedule award on July 6, 1998. On July 10, 1998 the Office referred appellant, relevant medical information from his case file, and a statement of accepted facts to Dr. Meredith K.L. Pang for an audiologic and otologic evaluation.

In a report dated August 20, 1998, Dr. Pang stated that, based on an August 18, 1998 audiogram conducted by Edson Hirohata, who holds a Master of Science degree and a Certificate of Clinical Competence in Audiology (CCC-A), appellant had a 0 percent hearing loss of the right ear, a 9.4 percent hearing loss of the left ear, and a binaural hearing loss of 1.6 percent. Dr. Pang stated that appellant's hearing was "stable and reliable in that once established, it will not worsen." She also noted that the "instrument calibration and environment in which the tests were conducted [met] the accreditation standards of the Professional Services Board of the ASHA (ANSI S3.6 (1969) and S3.1 (1977), respectively)." Dr. Pang also stated that the audiometer was last calibrated by Audited, Inc. on July 15, 1998.

The Office then referred Dr. Pang's report to Dr. David N. Schindler, an Office medical adviser, for a determination of appellant's hearing impairment. In a report dated August 24, 1998, Dr. Schindler applied the Office's standardized procedures to the August 18, 1998 audiogram performed for Dr. Pang. 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 15, 25, 25 and 20 decibels. These decibels were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 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 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 cycles per second revealed decibel losses of 30, 30, 25 and 40 decibels. These decibels were totaled at 125 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 6.25 which was multiplied by the established factor of 1.5 to compute a 9.4 percent loss of hearing for the left ear. Dr. Schindler recommended a hearing aid.

⁵ *Id.* at 224.

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.08 (September 1994).

By decision dated May 12, 1999, the Office awarded appellant a nine percent schedule award for monaural hearing loss in the left ear. The period of award would begin from August 18, 1998, the date of the audiogram testing, to September 15, 1998.⁷

On June 9, 1999 appellant requested an oral hearing. A hearing was held on April 23, 2000. After the hearing, appellant submitted a report and audiogram test results from Dr. Daniel C. Newbill.

In a decision issued and finalized on August 4, 2000, the hearing representative affirmed the Office's May 12, 1999 decision awarding appellant a nine percent schedule award for monaural hearing loss in the left ear.

On February 13, 2001 appellant requested reconsideration. In support of his reconsideration, appellant submitted reports from Drs. Ramon K. Sy, dated September 9, 2000, and Newbill, dated January 19, 2001.

By decision dated May 23, 2001, the Office denied modification of appellant's reconsideration.

The Board finds that appellant has no more than a nine percent monaural hearing loss in his left ear for which he received a schedule award.

The Board notes that neither of the reports from Dr. Sy or Dr. Newbill, while including speech reception thresholds and auditory discrimination scores, included the necessary information regarding the calibration of their equipment or a statement by either doctor relating to the accuracy of the testing. This is especially relevant given the direct results between the various tests. Without information on the calibration equipment, including the date of calibration, the separate reports by Drs. Sy and Newbill are of diminished probative value when compared with the report of Dr. Pang.

On the other hand, Dr. Pang's report was based on an audiogram conducted by a separate and certified specialist; she also certified that the instrument calibration and test environment met the accreditation standards of the Professional Services Board of the ASHA, and certified that the audiometer was last calibrated on July 15, 1998.

Accordingly, the Board finds that appellant has not established entitlement to greater than a nine percent monaural hearing loss in his left ear for which he received a schedule award.

⁷ It is well established that if calculations based on the monaural hearing loss would result in greater compensation, then the monaural calculations should be used; *see Joseph J. Tillo*, 39 ECAB 1345, 1348 (1988).

The decisions of the Office of Workers' Compensation dated May 23, 2001 and August 4, 2000 are affirmed.

Dated, Washington, DC
April 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member