

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JESSE W. JOHNSON and DEPARTMENT OF THE ARMY,  
ALABAMA NATIONAL GUARD, Montgomery, AL

*Docket No. 01-2158; Submitted on the Record;  
Issued April 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

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

Appellant, a 54-year-old automotive worker supervisor, filed a claim for benefits on March 2, 2000, claiming that he sustained a hearing loss caused by factors of his employment and that he became aware that this injury was causally related to his employment on November 8, 1981. He did not lose time from work.

Along with his claim, appellant submitted his personal qualifications statement, notification of personnel action, noise surveys, a certificate of employment, statements and hearing conservation data.

By letter dated February 1, 2001, the Office referred appellant and a statement of accepted facts to Dr. John Keebler, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

In a February 22, 2001<sup>1</sup> report, Dr. Keebler noted findings on audiological evaluation based on a February 22, 2001 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 10, 15, 30 and 60 decibels: left ear -- 10, 10, 35 and 55 decibels. Based on these findings, Dr. Keebler concluded that appellant had bilateral sensorineural hearing loss noise induced which was due to factors of his federal employment.

In a memorandum dated March 2, 2001, an Office medical adviser, relying on Dr. Keebler's audiogram results and calculations, concluded that appellant had a hearing loss of

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<sup>1</sup> The report is undated, however, the doctor's office confirmed the appointment as February 22, 2001.

5.63 percent in his right ear and a 3.75 percent loss in his left ear, which amounted to a 4 percent binaural hearing loss. He also advised trial use of hearing aides.

By letter dated March 6, 2001, the Office advised appellant that his claim was approved for bilateral sensorineural hearing loss and appellant completed the Form CA-7 claim for compensation.

On July 31, 2001 the Office granted appellant a schedule award for a four percent permanent bilateral hearing loss for the period February 22 to April 18, 2001, for a total of eight weeks of compensation.

The Board finds that appellant has not established that he has greater than a four percent permanent bilateral hearing loss, for which he received a schedule award.

The schedule award provisions of the Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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, however, does not specify the manner in which the percentage loss shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001).<sup>5</sup> Under the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>6</sup> Then the “fence” of 25 decibels is deducted since, 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.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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 binaural hearing loss.<sup>9</sup> In addition, the Office’s procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.<sup>10</sup> The procedure manual further indicates that audiological testing is to be

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> A.M.A., *Guides*, 246-55 (5<sup>th</sup> ed. 2001).

<sup>7</sup> *Id.* at 250.

<sup>8</sup> *Id.* at 250.

<sup>9</sup> *Id.* at 250.

<sup>10</sup> *Daniel C. Goings*, *supra* note 4; *Richard Beggs*, *supra* note 4.

performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA) or state licensure as an audiologist.<sup>11</sup>

In this case, the Office referred Dr. Keebler's report to an Office medical adviser to apply the Office's standardized procedures to the February 22, 2001 audiogram performed for Dr. Keebler. According to the Office's standardized procedures, testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed hearing losses of 10, 15, 30 and 60 respectively. These decibels, totaled to 115 and divided by 4, obtained an average hearing loss at those cycles of 28.75 decibels. The average of 33.15 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 3.75 decibels, which when multiplied by the established factor of 1.5 computes a 5.63 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 10, 10, 35 and 55 respectively. These decibels amounted 110, which, when divided by 4, obtains an average hearing loss at those cycles of 27.50 decibels. The average of 27.50 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above) equals 2.50, which when multiplied by the established factor of 1.5 amounts to a 3.75 percent loss in the left ear. The Office medical adviser then multiplied the lesser loss of 3.75 percent in the left ear by 5, added this figure to the greater loss of 5.63 percent and divided the total by 6 to arrive at a 4 percent binaural hearing loss.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides*, to determine that appellant has a four percent total binaural hearing loss causally related to his federal employment.

Finally, appellant's belief that he should be awarded more than eight weeks of compensation is inconsistent with uniform application of the schedule award standards for hearing loss.<sup>12</sup> The Act provides that, for a total, or 100 percent, loss of hearing in both ears, an employee shall receive 200 weeks of compensation.<sup>13</sup> Consequently, the amount payable for a 4 percent binaural loss would be 4 percent of 200 weeks or eight weeks of compensation. Consequently the amount payable for a four percent binaural loss, would be no more than the schedule award appellant received.

The Board therefore affirms the July 31, 2001 Office decision finding that appellant is entitled to a schedule award for no greater than a four percent permanent binaural hearing loss.

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

<sup>12</sup> 5 U.S.C. § 8107(c)(13).

<sup>13</sup> *Id.*

The July 31, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 23, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member