

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAYMOND C. COURTNEY and DEPARTMENT OF THE NAVY,  
MARINE CORPS AIR STATION, Cherry Point, NC

*Docket No. 01-1575; Submitted on the Record;  
Issued January 25, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 23 percent monaural loss of hearing, for which he received a schedule award.

In a decision dated March 2, 2001, the Office of Workers' Compensation Programs awarded appellant a schedule award for a 23 percent monaural hearing loss of the left ear. This determination was based on the November 29, 2000 calculation of the Office's medical adviser, who reviewed the May 19, 2000 audiological evaluation and report submitted by Dr. Charles Beasley, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for 11.96 weeks, beginning on May 19, 2000 and continuing through August 10, 2000.

The Board has duly reviewed the case record and finds that appellant has no more than a 23 percent monaural hearing loss.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> sets forth the number of weeks of compensation to be paid for the 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 of a member, function or organ 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 Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

Using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged, and a "fence" of 25 decibels is deducted

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<sup>1</sup> 5 U.S.C. § 8107.

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

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>3</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.<sup>4</sup>

In reviewing appellant's May 19, 2000 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the left ear reveal decibel losses of 30, 40, 35, and 55, respectively, for a total of 160 decibels. When divided by 4, the result is an average hearing loss of 40 decibels. The average loss of 40 is reduced by 25 decibels to equal 15 which when multiplied by the established factor of 1.5, results in a 22.5 percent monaural hearing loss for the left ear.<sup>5</sup> This figure was properly rounded up to 23 percent.<sup>6</sup>

Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 5, 15, 10 and 15 decibels respectively, for a total of 45 decibels. Using the same formula results in a 0 percent monaural hearing loss for the right ear.<sup>7</sup> Consequently, the reliable evidence of record does not establish that appellant has more than a 23 percent monaural loss of hearing.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.<sup>8</sup> With respect to schedule awards for hearing impairments, the Act provides that for a total, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks of compensation.<sup>9</sup>

In this case, appellant does not have a total, or 100 percent monaural hearing loss, but rather at most a 23 percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 23 percent loss of use of his left ear, he is entitled to 23 percent of the 52 weeks of compensation, which is 11.96 weeks. The Office, therefore, properly determined the number of weeks for which appellant is entitled to compensation under the schedule award provisions of the Act.

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<sup>3</sup> See A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>4</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

<sup>6</sup> *Id.*

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

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 5 U.S.C. § 8107(c)(13)(A).

The March 2, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
January 25, 2002

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member