

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN M. GONZALEZ and DEPARTMENT OF THE ARMY,
DIRECTORATE OF PUBLIC WORKS, Fort Sam Houston, TX

*Docket No. 01-1585; Submitted on the Record;
Issued January 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

In a decision dated April 27, 2001, the Office of Workers' Compensation Programs awarded appellant a schedule award for a three percent binaural hearing loss. This determination was based upon the March 12, 2001 calculation of the Office's medical adviser, which in turn, was made on the basis of the February 13, 2001 audiological evaluation and report submitted by Dr. Alan Dinesman, a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of six weeks, beginning on February 13, 2001 and continuing through March 26, 2001.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a three percent binaural hearing loss.

Section 8107 of the Federal Employees' Compensation Act¹ 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.²

Utilizing 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

¹ 5 U.S.C. § 8107.

² 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.³ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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.⁴

In reviewing appellant's February 13, 2001 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the left ear reveal decibel losses of 15, 20, 20 and 50, respectively, for a total of 105 decibels. When divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 is reduced by 25 decibels to equal 1.25 which when multiplied by the established factor of 1.5, results in a 1.875 percent monaural hearing loss for the left ear.⁵ Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 15, 20 and 65 respectively, for a total of 120 decibels. Utilizing the same above-noted formula results in a 7.5 percent monaural hearing loss for the right ear.⁶ The 1.875 percent hearing loss for the left ear (the ear with the lesser loss) when multiplied by 5, yields a product of 9.375. The 9.375 is then added to the 7.5 percent hearing loss for the right ear (the ear with the greater loss) to obtain a total of 16.875. The 16.875 is then divided by 6, in order to calculate a binaural loss of hearing of 2.8 percent. This figure was properly rounded-up to three percent.⁷ Consequently, the reliable evidence of record does not establish that appellant has greater than a three percent binaural 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.⁸ With respect to the schedule awards for hearing impairments, the pertinent provision of the Act provides that for a total, or 100 percent loss of hearing in both ears, an employee shall receive 200 weeks of compensation.⁹ In the instant case, appellant does not have a total, or 100 percent binaural hearing loss, but rather a 3 percent binaural hearing loss. As such, he is entitled to 3 percent of the 200 weeks of compensation, which is 6 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

³ See A.M.A., *Guides* 250 (5th ed. 2001).

⁴ FECA Program Memorandum No. 272 (issued February 24, 1986).

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

⁶ *Id.*

⁷ *Id.*

⁸ 5 U.S.C. § 8107.

⁹ 5 U.S.C. § 8107(c)(13)(B).

The April 27, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 24, 2002

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member