

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAMUEL A. BURROWS and TENNESSEE VALLEY AUTHORITY,  
WIDOWS CREEK FOSSIL FUEL PLANT, Stevenson, AL

*Docket No. 02-1079; Submitted on the Record;  
Issued November 12, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained more than an 18 percent binaural hearing loss for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim filed on October 20, 2000 for binaural hearing loss.

On March 19, 2001 the Office referred appellant for a second opinion evaluation to determine the extent of his hearing loss. The Office asked its medical adviser to review the report of Dr. Joseph Motto, a Board-certified otolaryngologist. Based on his audiogram, the Office medical adviser found an 18 percent bilateral hearing loss.

On August 23, 2001 the Office issued a schedule award for an 18 percent binaural hearing loss. The award ran from April 24, 2000 to December 31, 2001.

The Board finds that appellant is entitled to no more than the 18 percent schedule award he received for his bilateral 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.<sup>2</sup> 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>3</sup> The Act's implementing regulation has adopted

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999), citing *Danniel C. Goings*, 35 ECAB 781, 783 (1986).

the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.<sup>4</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz).<sup>5</sup> The losses at each frequency are added up and averaged and 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 amount of loss remaining for each ear is then multiplied by 1.5. The hearing loss of the better ear is multiplied by five and added to the amount of hearing loss of the worse ear. This total is then divided by six to arrive at the percentage of binaural hearing loss.<sup>7</sup>

In this case, appellant submitted an audiogram dated October 17, 2000 from Dr. John F. Boxell, a Board-certified otolaryngologist, which he interpreted as showing mid to high frequency nerve loss, with precipitous high frequency deficit bilaterally. The losses recorded for the right ear were 20, 30, 25 and 70 decibels, totaling 145 decibels respectively, and for the left ear 25, 20, 35 and 55 decibels, totaling 135 decibels respectively.

However, a more recent audiogram, showing a greater hearing loss, was administered on April 21, 2001 for Dr. Motto, whose results were reviewed by the Office medical adviser. Testing for the left ear revealed decibel losses of 15, 25, 40 and 65 decibels respectively. These losses totaled 145, which was divided by 4 to obtain the average hearing loss at the 500, 1,000, 2,000 and 3,000 Hz of 36.25. The average was then reduced by 25 decibels (as discussed previously) to equal 11.25, which was then multiplied by 1.5 to show a 16.88 percent hearing loss for the left ear.

Testing for the right ear revealed decibel losses of 15, 30, 35 and 75 respectively for a total of 155 decibels. This figure was divided by 4 to obtain the average hearing loss at those cycles of 38.75 decibels. The average was then reduced by the 25-decibel fence, and the result, 13.75, was multiplied by 1.5 to compute a 20.63 percent loss of hearing for the right ear. Because appellant had hearing loss in both ears, the loss in the better ear was multiplied by five and added to the loss in the worse ear. The total was then divided by 6 for a 17.5 binaural loss, which was rounded off to 18 percent.

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the audiometric findings reported by Dr. Motto. There is no audiogram evidence that appellant has more than the 18 percent binaural hearing loss for which he received a schedule award.

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<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Donald C. Swiger*, 50 ECAB 462, 463 (1999).

<sup>6</sup> *Ausbon N. Johnson*, *supra* note 3.

<sup>7</sup> *Stacy L. Walker*, 48 ECAB 353, 355 (1997).

Under the Act, the compensation schedule provides a maximum of 200 weeks of compensation for a complete (100 percent) binaural hearing loss. Appellant received 36 weeks of compensation under the August 23, 2001 schedule award or 18 percent of 200 weeks.<sup>8</sup>

The August 23, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
November 12, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See 5 U.S.C. § 8107(c)(13)(B); Federal (FECA) Procedure Manual, Part 3 -- *Schedule Awards*, Exhibit One (December 1994); *Richard Larry Enders*, 48 ECAB 184, 187 (1996).