

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID A. COSTELLO and DEPARTMENT OF THE NAVY,  
NAVAL CONSTRUCTION BATTALION CENTER, Port Hueneme, CA

*Docket No. 02-1420 ; Submitted on the Record;  
Issued October 7, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained more than a four percent bilateral hearing loss for which he received a schedule award.

On July 6, 2000 appellant, then a 46-year-old welder, filed a notice of occupational disease claiming that his hearing loss was caused by noise exposure in the course of his federal employment. He first became aware of his hearing loss and realized that it was caused or aggravated by his employment on August 19, 1986.<sup>1</sup>

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description and audiograms performed as part of his fitness-for-duty evaluations for intermittent periods from 1985 to 1996.

By letter dated December 27, 2000, the Office referred appellant and a statement of accepted facts to Dr. Henry Bikhazi, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant. The audiologist performing the January 16, 2001 audiogram for Dr. Bikhazi noted findings on audiological evaluation. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed the following: right ear 20, 20, 30 and 35 decibels; left ear 20, 20, 40 and 60 decibels. Dr. Bikhazi related appellant's history of noise exposure and stated that his related hearing loss since 1992. Dr. Bikhazi diagnosed bilateral sensorineural hearing loss compatible with appellant's exposure to noise in his federal employment. He noted that appellant "could benefit from bilateral amplification with the use of hearing aids."

By decision dated January 19, 2001, the Office accepted appellant's claim for bilateral hearing loss.

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<sup>1</sup> Appellant worked as a welder at the Long Beach Naval Shipyard from 1974 to 1997 when, as a result of the closure of the shipyard, he was reassigned to the Naval Air Warfare Center, Port Mugu, CA. He was subsequently transferred to the Naval Construction Battalion Center, Port Hueneme, CA on October 11, 1998.

On June 21, 2001 appellant filed a claim for a schedule award.

In a report dated August 1, 2001, Dr. David Schindler, a Board-certified otolaryngologist and an Office medical adviser, reviewed the findings of Dr. Bikhazi and determined that appellant had a four percent bilateral hearing loss. He noted that hearing aids were indicated.

In a decision dated January 10, 2002, the Office awarded appellant a four percent impairment for bilateral hearing loss. Appellant's award would run from January 16 to March 12, 2002.

The Board finds that the record does not establish more than a four percent permanent impairment for bilateral hearing loss.

The schedule award provisions of the Federal Employees' Compensation 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. The Act, however, 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 uniformed standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using 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>5</sup> Then, the "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 speech under everyday conditions.<sup>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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 the binaural hearing loss.<sup>8</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> A.M.A., *Guides* at 246, 247 (5<sup>th</sup> ed. 2001).

<sup>5</sup> *Id.*

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

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

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

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

In this case, the Office medical adviser applied the Office's standard procedures to the January 16, 2001 audiogram performed for Dr. Bikhazi. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 30 and 35 decibels respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels which was multiplied by the established factor 1.5 to compute a 1.9 percent loss of hearing for the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 40 and 60 decibels respectively. These decibel losses were totaled at 140 and divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The average of 35 decibels was then reduced by 25 decibels to equal 10 decibels which was multiplied by the established factor 1.5 to compute a 15 percent loss of hearing for the left ear. The lesser amount of 1.9 percent was then multiplied by 5 (9.5) and added to the greater loss of 15 percent and divided by 6 to reach a binaural hearing loss of 4 percent.

The Board finds that the Office medial adviser applied the proper standards to the findings stated in Dr. Bikhazi's report. This resulted in a calculation of four percent bilateral hearing loss for which a schedule award had been awarded. The Board notes that hearing aids were authorized.

A schedule award under the Federal Employees' Compensation 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>10</sup> With respect to 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' compensation. In the instant case, appellant does not have a total or 100 percent binaural hearing loss, but rather a 4 percent binaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 4 percent loss of use of his hearing, he is entitled to 4 percent of the 200 weeks of compensation, which is 8 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

On appeal, appellant alleged that the Office erred in determining that the period of the award ran from January 16 to March 12, 2001. However, the Office properly began the award on the date of maximum medical improvement as determined by the date of the audiogram testing and found by the Office's consulting physician, Dr. Bikhazi and its medical adviser, Dr. Schindler. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

injury.<sup>11</sup> The period of award ran for eight weeks, the amount of time statutorily mandated under the Act for a four percent bilateral hearing loss.<sup>12</sup>

The decision of the Office of Workers' Compensation Programs dated January 10, 2002 is hereby affirmed.

Dated, Washington, DC  
October 7, 2002

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> *Joseph R. Waples*, 44 ECAB 936 (1993).

<sup>12</sup> 5 U.S.C. § 8107. Further, appellant questioned why he would be authorized hearing aids if his hearing loss was only four percent. The Office's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(2) (October 1995).