

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES J. KLAUS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 02-785; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant has more than a two percent loss of hearing in the left ear, for which he received a schedule award.

On May 22, 2001 appellant, then a 53-year-old equipment worker, filed a notice of occupational disease (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. Appellant indicated that he first became aware of his hearing loss and its relation to his federal employment on March 1, 1995. The Office of Workers' Compensation Programs accepted appellant's claim for a binaural loss on December 3, 2001.

In a decision dated January 9, 2002, the Office awarded appellant a schedule award for a two percent loss of hearing in the left ear. This determination was based upon the November calculation of the Office's medical adviser, which in turn, was made on the basis of the August 13, 2001 audiological evaluation and report submitted, by Dr. J. Douglas Green, Jr., a Board-certified otolaryngologist and Office referral physician. The Office awarded compensation for a period of 1.04 weeks, beginning on August 13, 2001 and continuing through August 20, 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 two percent hearing loss in his left ear.

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

¹ 5 U.S.C. § 8107.

American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ 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.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

In reviewing appellant’s August 13, 2001 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz for the left ear reveal decibel losses of 20, 25, 20 and 40, 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 1.88 percent monaural hearing loss for the left ear.⁸ Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 15 and 25 respectively, for a total of 80 decibels. When divided by 4, the result is an average hearing loss of 20 decibels. As this is below 25 decibels, it results in no ratable impairment in the ability to hear everyday speech under everyday conditions.⁹ As there was a zero hearing loss in the right ear, the Office properly calculated the hearing loss as monaural loss. This figure was properly rounded up to two percent.¹⁰

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.¹¹ 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.¹²

² 20 C.F.R. § 10.404 (1999).

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Jeffrey J. Stickney*, 51 ECAB ____ (Docket No. 99-1659, issued August 7, 2000).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(2)(a) (September 1994).

⁹ *Supra* note 3.

¹⁰ *Supra* note 8.

¹¹ 5 U.S.C. § 8107.

¹² 5 U.S.C. § 8107(c)(13)(a).

In this case, appellant does not have a total, or 100 percent monaural hearing loss, but rather a 2 percent monaural hearing loss, which the Office has determined was employment related. As he has no more than a 2 percent loss of use of his left ear, he is entitled to two percent of the 52 weeks of compensation, which is 1.04 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.

The January 9, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member