

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of STEVEN M. WEINRUB and DEPARTMENT OF THE NAVY,  
MARINE CORPS LOGISTICS BASE, Barstow, CA

*Docket No. 03-1434; Submitted on the Record;  
Issued August 8, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 13 percent hearing impairment of his right ear for which he received a schedule award.

On September 15, 2002 appellant, then a 50-year-old motor vehicle operator, filed a notice of occupational disease alleging that beginning June 28, 2002 he sustained hearing loss in his right ear as a result of his federal employment.<sup>1</sup> He claimed that he was exposed to noise from diesel engines, machinery and other warehouse noises for eight hours per day since approximately 1988. In support of his claim, he submitted audiograms dated from January 1988 to June 5, 2002.

On July 31, 2002 the Office of Workers' Compensation Programs accepted that appellant sustained high frequency sensorineural hearing loss in the right ear and authorized a hearing aid. On September 12, 2002 appellant filed a claim for a schedule award (Form CA-7).

On September 18, 2002 the Office referred appellant and the medical evidence of record to Board-certified otolaryngologist, Dr. Montra Kanok, for a second opinion examination, to determine the extent of appellant's hearing condition.

In a report dated November 13, 2002, Dr. Kanok indicated that he examined appellant and the audiograms of record and diagnosed "no hearing in the left ear" and "high frequency sensory hearing loss on the right ear, most likely caused by noise trauma with some contribution by age." Dr. Kanok noted that appellant had preexisting hearing loss in his left ear due to childhood diseases. He submitted an accompanying October 17, 2002 audiogram, which revealed practically no response in the left ear and the following losses in the right ear: 10 decibel loss at 500 cycles per second (cps), 20 decibel loss at 1,000 cps, 40 decibel loss at 2,000 cps and 70 decibel loss at 3,000 cps. Dr. Kanok recommended that appellant wear a digital

---

<sup>1</sup> Appellant indicated in an attached statement that he was born deaf in his left ear.

hearing aid in the right ear. The Office authorized a Beltone hearing instrument for appellant's right ear.

On February 12, 2003 the Office forwarded the case record, including Dr. Kanok's November 13, 2002 report with an accompanying audiogram and a list of questions, to the district medical adviser for review. In a report dated March 1, 2003, Dr. David N. Schindler, a Board-certified otolaryngologist, diagnosed appellant with right-sided high frequency neurosensory hearing loss, consistent with hearing loss due to noise exposure. He stated that the date of maximum medical improvement was October 17, 2002 and found that appellant had a 13 percent monaural hearing loss in the right ear. With respect to the left ear, Dr. Schindler noted that appellant had hearing loss due to a viral exanthema in childhood. He opined that hearing loss in the left ear was not aggravated by noise exposure.

By decision dated March 26, 2003, the Office granted appellant a schedule award for 13 percent impairment of the right ear.

The Board finds that appellant has no more than a 13 percent impairment of the right ear for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.<sup>2</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.<sup>3</sup> However, as a matter of administrative practice, the Board has stated: "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 uniform standards applicable to all claimants."<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>6</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>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> The binaural loss is determined by calculating the loss in

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>4</sup> *Id.*

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

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

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

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

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>9</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>10</sup>

The Office medical adviser and consulting audiologist applied the Office's standardized procedures to the October 17, 2002 audiogram performed for Dr. Kanok. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 20, 40 and 70 decibels respectively. These decibel losses were totaled at 135 decibels and divided by 4 to obtain the average hearing loss at those cycles of 33.75 decibels. The average of 33.75 decibels was then reduced by 25 decibels (the first 25 decibels were deducted as discussed above) to equal 8.75 decibels which was multiplied by the established factor 1.5 to compute a 13.1 percent loss of hearing for the right ear. The medical adviser noted that hearing loss in the left ear was preexisting and was not aggravated by employment. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a 13 percent loss of hearing in his right ear<sup>11</sup> and that his left ear was not compensable.

The Board finds that the Office medical adviser and consulting audiologist applied the proper standards to the findings stated in Dr. Kanok's March 1, 2003 report and the accompanying October 17, 2002 audiometric evaluation that Dr. Kanok reviewed. This resulted in a calculation of a 13 percent monaural hearing loss in the right ear.

Appellant objects to the award of 6.76 weeks of compensation for the hearing loss in the right ear. The Act<sup>12</sup> provides that, for a total of 100 percent, loss of hearing in one ear, an employee shall receive 52 weeks of compensation.<sup>13</sup> Accordingly, the amount payable for a 13 percent monaural hearing loss would be 13 percent of 52 weeks or 6.76 weeks of compensation which is what appellant was awarded. Under the schedule provisions, he is entitled to no more.<sup>14</sup>

---

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

<sup>10</sup> *Donald E. Stockstand*, 53 ECAB\_\_ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>11</sup> Fractions .49 and below are rounded down to the nearest whole number; *see* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b) (November 1998).

<sup>12</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>14</sup> The schedule award commences on the date of "maximum improvement" or the point at which the injury has stabilized and will not improve further; *see Marie J. Born*, 27 ECAB 623 (1976). That determination is based on the medical evidence and the date is usually the date of the medical examination which determined the extent of the hearing loss; *see James L. Thomas*, 31 ECAB 1088 (1980). In the instant case, the date was October 17, 2002, the date of the audiologic examination conducted for Dr. Kanok, the results of which were used as the basis of the schedule award.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 26, 2003 is hereby affirmed.

Dated, Washington, DC  
August 8, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member