

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY COLODONATO and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Baltimore, MD

*Docket No. 03-1676; Submitted on the Record;
Issued August 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 22 percent binaural hearing loss for which he received a schedule award.

On June 4, 2001 appellant, then a 57-year-old retired special agent, filed an occupational disease claim alleging that he sustained a hearing loss in the course of his federal employment. He stated that he first became aware of his illness on March 13, 1979. On the reverse of the form, the employing establishment indicated that appellant had retired on January 3, 2001. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed at the employing establishment between February 15, 1972 and April 13, 1999 and documents indicating that he was exposed to loud noise at work. Appellant filed a claim for a schedule award on June 4, 2001.

Dr. Douglas C. McCorkle, a Board-certified otolaryngologist, examined appellant on January 3, 2002 and audiometric testing on the doctor's behalf was performed on that day. He reported that appellant had a borderline normal to moderate sensorineural hearing loss in the left ear and mild to profound sensorineural hearing loss in the right ear. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following -- right ear: 40, 65, 85 and 85 decibels; left ear -- 20, 25, 35 and 50 decibels. Dr. McCorkle concluded that appellant had sustained a 65.6 percent right ear hearing loss and an 11.2 percent left ear hearing loss for a combined 20.3 percent binaural hearing loss. He recommended that appellant avoid noise exposure.

On August 9, 2002 an Office of Workers' Compensation Programs' medical adviser reviewed the medical report of Dr. McCorkle and, after applying the Office's standards, calculated a 21.87 percent binaural hearing loss. He noted maximum medical improvement as of the date of Dr. McCorkle's examination.

By letter dated May 13, 2003, the Office accepted the claim for binaural hearing loss.

By decision dated May 22, 2003, the Office granted appellant a schedule award for a 22 percent binaural loss of hearing, for 44.0 weeks of compensation from January 3 to November 16, 2002.

The Board finds that appellant has no more than a 22 percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulation² 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. However, the Act does not specify the manner in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice requires the use of a single set of tables so that there may be uniform standards applicable to all claimants.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.³ The losses at each frequency are added and averaged.⁴ 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 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 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 loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for schedule award purposes.⁸

In order to determine the extent and degree of any employment-related loss of hearing, the Office referred appellant to Dr. McCorkle, who concluded that appellant had sustained a borderline normal to moderate sensorineural hearing loss in the left ear and mild to profound sensorineural hearing loss in the right ear. He concluded that the combined loss for both ears was 20.3 percent.

¹ 5 U.S.C. §§ 8101-8193, § 8107.

² 20 C.F.R. § 10.404.

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 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).

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. McCorkle's January 3, 2002 report. The Office medical adviser calculated the extent of hearing loss as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second were 40, 65, 85 and 85 decibels which totaled 275 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 68.75 decibels. The average of 68.75 decibels was reduced by the "fence" of 25 decibels to obtain the average hearing loss at those frequencies of 43.75 decibels, which when multiplied by the established factor of 1.5, computed a 65.62 percent monaural loss of hearing for the right ear. The decibel loss for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second were 20, 25, 40 and 50 decibels which totaled 135 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 33.75 decibels, which was reduced to 8.75 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 13.12 decibel hearing loss for the left ear. The medical adviser then multiplied the 15 percent hearing loss in the left ear by 5, then added it to the 65.62 loss in the right ear and divided the sum by 6 to calculate appellant's binaural loss of hearing at 21.87 percent. This figure was properly rounded up to 22 percent.⁹

The Board finds that the report and audiogram performed on behalf of Dr. McCorkle constitute the weight of the medical evidence of record and establishes that appellant has no more than a 22 percent binaural loss of hearing for which he received a schedule award.

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss and that he should have been awarded a 50 percent impairment. The schedule award provisions of the Act provide for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.¹⁰ The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.¹¹ A partial loss of hearing is compensated at a proportionate rate.¹² Thus, appellant's award of compensation for a 22 percent binaural hearing loss entitled appellant to 22 percent of 200 weeks of compensation, or 44 weeks of compensation. The record indicates that appellant has already received this amount of compensation. He is entitled to no more compensation under the Act.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

¹⁰ 5 U.S.C. § 8107(c) and implementing regulation at 20 C.F.R. § 10.404.

¹¹ 5 U.S.C. § 8107(c)(13)(B).

¹² 5 U.S.C. § 8107(c)(19).

The decision of the Office of Workers' Compensation Programs dated May 22, 2003 is hereby affirmed.

Dated, Washington, DC
August 27, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member