

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LUIS E. FERNANDEZ and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATIONS, Miami, FL

*Docket No. 02-1682; Submitted on the Record;  
Issued February 4, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to greater than six percent monaural hearing loss, for which he received a schedule award.

On February 15, 2001 appellant, then a 54-year-old agent,<sup>1</sup> filed an occupational disease claim (Form CA-2) alleging that his hearing loss was due to his firearm training.<sup>2</sup> The Office of Workers' Compensation Programs accepted the claim for a hearing loss.

Appellant filed a claim for a schedule award on February 15, 2001.

To determine the extent of appellant's current hearing loss, the Office referred appellant, together with a statement of accepted facts, for a second opinion evaluation by Dr. Jose L. Arsuaga, a Board-certified otolaryngologist. In a report dated December 12, 2001, Dr. Arsuaga reported audiometric test results, also performed on September 27, 2000 and opined that appellant suffered from a hearing loss due to employment factors. The September 28, 2001 audiometric test results obtained for Dr. Arsuaga revealed the following decibel losses at the 500, 1,000, 2,000 and 3,000 frequency levels: right ear of 15, 5, 35 and 60 decibels; left ear of 15, 10, 10 and 30 decibels.

On March 4, 2002 an Office medical adviser reviewed Dr. Arsuaga's findings and applied the Office's standardized procedures to the September 28, 2001 audiogram and concluded appellant had a six percent monaural hearing loss.

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<sup>1</sup> Appellant noted that at the time he filed his claim he was retired.

<sup>2</sup> Appellant retired effective March 31, 2000, at an annual salary of \$103,799.00. He indicated that his monthly retirement benefit began on June 1, 2000 and was in the amount of \$2,752.00.

By decision dated May 14, 2002, appellant was issued a schedule award for a six percent monaural hearing loss.<sup>3</sup> The period of the award was for 3.12 weeks and ran for the period September 28 to October 19, 2001. His weekly pay was calculated at \$2,201.92 with his weekly compensation calculated at \$1,651.55. The maximum allowable pay rate was determined to be \$1,494.56.

The Board finds that appellant has no greater than a six percent monaural hearing loss, for which he received a schedule award

The schedule award provisions of the Federal Employees' Compensation Act<sup>4</sup> provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>5</sup> 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>6</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* (A.M.A., *Guides*).<sup>7</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>8</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>9</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>10</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 up to the greater loss and the total is divided by six to

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<sup>3</sup> The decision is not contained in the record, but a copy of the decision was enclosed with appellant's appeal.

<sup>4</sup> 5 U.S.C. § 8107 *et seq.*

<sup>5</sup> *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

<sup>6</sup> *Marco A. Padilla*, 51 ECAB 202 (1999); *Arthur E. Anderson*, *supra* note 5 at 697.

<sup>7</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

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

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

<sup>10</sup> *Id.*

arrive at the amount of the binaural hearing loss.<sup>11</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>12</sup>

On March 4, 2002 an Office medical adviser reviewed Dr. Arsuaga's findings and applied the Office's standardized procedures to the September 28, 2001 audiogram and concluded appellant had a six percent monaural hearing loss. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added up and averaged and the "fence" of 25 decibels was deducted. The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. Testing for the right ear revealed hearing thresholds levels of 15, 5, 35 and 60 decibels. These losses total 115 for an average of 28.75 decibels. Reducing this average by 25 decibels (as discussed earlier) leaves a balance of 3.75 decibels, which when multiplied by 1.5, results in a 5.63 percent hearing. The 5.63 percent hearing loss for the right was rounded up by the Office medical adviser to reflect a 6 percent total loss of hearing in the right ear. Testing for the left ear revealed hearing threshold levels of 15, 10, 10 and 30 decibels. These losses total 65 for an average of 16.25 decibels. Reducing this average by 25 decibels (as discussed earlier) leaves a balance of 0 loss meaning that no impairment is presumed to exist in appellant's ability to hear, with his left ear, everyday sounds under everyday listening conditions. This is a nonratable hearing loss. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the audiometric findings reported by Dr. Arsuaga. There is no evidence that appellant has more than the six percent monaural loss of hearing in his right ear and a nonratable loss of hearing in his left ear, for which he received a schedule award.

The schedule award provisions of the Act specify the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.<sup>13</sup> The Act establishes a maximum of 52 weeks of compensation as the award for total monaural hearing loss.<sup>14</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>15</sup> so appellant's award of compensation for a six percent monaural hearing loss entitled appellant to 6 percent of 52 weeks of compensation or 3.12 weeks of compensation.

The Board finds that the Office properly awarded appellant a total of \$4,663.03 in compensation for his employment-related six percent monaural hearing loss. 5 U.S.C. § 8112(a) provides in pertinent part: "Except as provided by section 8138<sup>16</sup> of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15...." The record

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<sup>11</sup> *Id.*

<sup>12</sup> *Donald E. Stockstad*, 53 ECAB \_\_\_\_ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted* (modifying prior decisions) Docket No. 01-1570 (issued August 13, 2002).

<sup>13</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.404.

<sup>14</sup> 5 U.S.C. § 8107(c)(13), (a).

<sup>15</sup> 5 U.S.C. § 8107(c)(19).

<sup>16</sup> Section 8138 applies only to noncitizens and aliens and is, therefore, inapplicable to this claim. 5 U.S.C. § 8138.

indicates that appellant's monthly pay, which included locality adjustment pay and "other pay," exceeded the maximum rate of basic pay for a GS-15, step 10. Appellant indicated on his schedule award claim form that his basic pay was \$103,799.00. Therefore, the Office properly determined that appellant was entitled to a total award in the amount of \$4,663.00 or \$103,623.00 divided by 52 weeks, multiplied by the compensation rate of 75 percent, multiplied by the 3.12 week award duration.

The May 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 4, 2003

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member