

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER E. HAGOOD and TENNESSEE VALLEY AUTHORITY, JOHN
SERVIER FOSSILL PLANT, Rogersville, TN

*Docket No. 02-1128; Submitted on the Record;
Issued March 18, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 16 percent binaural hearing loss for which he received a schedule award.

On August 20, 1999 appellant, then a 60-year-old retired maintenance machinist foreman, filed an occupational disease claim alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he first became aware of his illness in 1980. On the reverse of the form, the employing establishment indicated that appellant had retired on November 18, 1994. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed by the employing establishment between April 8, 1964 and November 18, 1993, and documents indicating that appellant was exposed to loud noise at work.

By letter dated February 7, 2001, the Office of Workers' Compensation Programs referred appellant to Dr. Frank B. Little, Jr., a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Little examined appellant on February 26, 2001, and audiometric testing on the doctor's behalf was performed on that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following -- right ear: 30, 25, 30 and 55 decibels; left ear -- 25, 30, 35 and 65 decibels. The audiogram results noted a calibration date of April 19, 2000.

In the February 26, 2001 report, Dr. Little noted examination findings and diagnosed noise-induced sensorineural hearing loss. He found that appellant's hearing loss was consistent with his history of noise exposure and working environment. Dr. Little recommended the use of noise protection.

By letter dated April 16, 2001, the Office accepted the claim for binaural hearing loss. Appellant thereafter filed a claim for a schedule award.

On March 14, 2001 an Office medical adviser reviewed the medical report of Dr. Little and calculated a 16 percent binaural hearing loss. The Office also authorized the use of hearing aids on a trial basis. He noted maximum medical improvement as of the date of Dr. Little's examination.

By decision dated February 27, 2002, the Office granted appellant a schedule award for a 16 percent binaural loss of hearing, for 32.0 weeks of compensation from February 26 to October 7, 2001.

The Board finds that appellant has no more than a 16 percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing federal regulations² set forth the number of weeks of compensation to be paid for permanent loss of use of the members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in 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.⁴ 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."⁵

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.⁶ The losses at each frequency are added and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107.

⁴ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Danniel C. Goings*, *supra* note 4.

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for schedule award purposes.¹¹

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings stated in Dr. Little's February 26, 2001 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 30, 25, 30 and 55 decibels which totaled 140 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 35 decibels. The average of 35 decibels was reduced by the "fence" of 25 decibels to obtain the average hearing loss at those frequencies of 10 decibels, which when multiplied by the established factor of 1.5, computed a 15 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 25, 30, 35 and 65 decibels which totaled 155 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 38.75 decibels, which was reduced to 13.75 decibels when the "fence" of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 20.63 decibel hearing loss for the left ear. The medical adviser then multiplied the 15 percent hearing loss in the right ear by 5, then added it to the 20.63 loss in the left ear and divided the sum by 6 to calculate appellant's binaural loss of hearing at 16 percent.

The Board finds that the report and audiogram performed on behalf of Dr. Little constitute the weight of the medical evidence of record and establishes that appellant has no more than a 16 percent binaural loss of hearing for which he received a schedule award.

Appellant objects to the award of 32 weeks of compensation for the hearing loss in both ears. The Act provides that, for a total, or 100 percent, loss of hearing of both ears, the maximum award is 200 weeks of compensation.¹² Accordingly, the amount payable for a 16 percent binaural loss would be 16 percent of 200 weeks, or 32 weeks of compensation, which is what appellant received. Under the schedule award provisions, he is entitled to no more.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *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).

¹² 5 U.S.C. § 8107(c)(13)(b).

The decision of the Office of Workers' Compensation Programs dated February 27, 2002 is hereby affirmed.

Dated, Washington, DC
March 18, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member