

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD H. ROBERTS and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION, Mobile, AL

*Docket No. 03-1763; Submitted on the Record;  
Issued September 24, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established a greater than nine percent monaural (left ear) hearing loss for which he received a schedule award.

On January 11, 2002 appellant, then a 74-year-old retired special agent, 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 on July 1, 1982. On the reverse of the form, the employing establishment indicated that appellant had retired on August 29, 1980. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed by the employing establishment between October 2, 1952 and February 13, 1980 and documents indicating that appellant was exposed to loud noise at work. Appellant also filed a claim for a schedule award on January 11, 2002.

In an attending physician's form dated January 19, 2002, Dr. Barry L. Brown, an attending Board-certified otolaryngologist, diagnosed noise-induced sensorineural hearing loss.

To determine the extent and degree of appellant's loss of hearing, the Office of Workers' Compensation Programs referred appellant to Dr. John S. Keebler, a Board-certified otolaryngologist, who examined appellant on January 14, 2003 and audiometric testing on the doctor's behalf was performed on that day. Dr. Keebler reported that appellant had moderate-to-severe bilateral sensorineural hearing loss ear, "probably noise induced." Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following -- right ear: 5, 10, 35 and 50 decibels; left ear -- 0, 10, 45 and 70 decibels. The audiogram results noted a calibration date of February 2002. He recommended that appellant protect his ears and have a hearing aid evaluation.

On January 23, 2003 an Office medical adviser reviewed the medical report of Dr. Keebler and, after applying the Office's standards, calculated a 9.38 percent monaural (left

ear) hearing loss, which he rounded down to 9 percent. He noted maximum medical improvement as of the date of Dr. Keebler's examination.

By letter dated February 3, 2003, the Office accepted the claim for bilateral sensorineural hear loss.

By decision dated April 7, 2003, the Office granted appellant a schedule award for a 9 percent monaural (left ear) loss of hearing, for 4.68 weeks of compensation from January 14 to February 15, 2003.

The Board finds that appellant has no more than a nine percent monaural (left ear) hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulation<sup>2</sup> 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 of 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 cps.<sup>3</sup> The losses at each frequency are added and averaged.<sup>4</sup> A "fence" of 25 decibels (dBs) is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</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 to the greater loss and the total is divided by six to arrive at the amount of the binaural loss.<sup>7</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for schedule award purposes.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

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

<sup>5</sup> *Id.*

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

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

<sup>8</sup> *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).

In order to determine the extent and degree of any employment-related loss of hearing, the Office referred appellant to Dr. Keebler, who concluded that appellant had sustained a moderate to severe bilateral sensorineural hearing loss, which was “probably noise induced.”

The Board finds that the Office medical adviser properly applied the Office’s standards to the audiometric findings stated in Dr. Keebler’s January 14, 2003 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 cps were 5, 10, 35 and 50 dBs which totaled 100 dBs and divided by 4 to obtain the average hearing loss at those frequencies of 25.00 dBs. The average of 25.00 dBs was reduced by the “fence” of 25 dBs to obtain the average hearing loss at those frequencies of 0 dBs, which when multiplied by the established factor of 1.5, computed a 0 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 cps were 0, 10, 45 and 70 dBs which totaled 125 dBs and divided by 4 to obtain the average hearing loss at those frequencies of 31.25 dBs, which was reduced to 6.25 dBs when the “fence” of 25 dBs was subtracted, which was then multiplied by 1.5 to arrive at a 9.38 dB hearing loss for the left ear. This figure was properly rounded down to nine percent.<sup>9</sup>

The Board finds that the report and audiogram performed on behalf of Dr. Keebler constitute the weight of the medical evidence of record and establishes that appellant has no more than a nine percent monaural (left ear) loss of hearing for which he received a schedule award.

The decision of the Office of Workers’ Compensation Programs dated April 7, 2003 is hereby affirmed.

Dated, Washington, DC  
September 24, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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