

Office based its determination on the November 29, 2005 calculations of its medical adviser, who, in turn, relied on the July 13, 2004 audiological evaluation and report submitted by Dr. Gerald G. Randolph, a Board-certified otolaryngologist and Office referral physician.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged.⁵ 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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸

ANALYSIS

In reviewing appellant's July 13, 2004 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz for the right ear reveal decibel losses of 20, 20, 35 and 65, respectively, for a total of 140 decibels. This figure when divided by four results in an average hearing loss of 35 decibels. The average loss of 35 is reduced by 25 decibels to 10, which when multiplied by 1.5 represents a 15 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20,

² The Act provides that, for complete, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

³ 20 C.F.R. § 10.404 (2007).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

10, 20 and 50 decibels respectively, for a total of 100 decibels. Utilizing the above-noted formula ($100 \div 4 = 25 - 25 = 0$) results in a 0 percent monaural hearing loss for the left ear. Based on the 15 percent loss in the right ear and the 0 percent loss in the left, appellant has a 2.5 percent binaural loss ($0 \text{ percent} \times 5 = 0 \text{ percent} + 15 \text{ percent} = 15 \text{ percent} \div 6 = 2.5 \text{ percent}$), which would properly be increased to 3 percent.⁹

A three percent binaural loss would entitle appellant to six weeks' compensation (three percent x 200 weeks).¹⁰ However, by awarding appellant solely for the right ear monaural loss of 15 percent, he received an additional 1.8 weeks' compensation (15 percent x 52 weeks = 7.8 weeks).¹¹ The record does not include any credible medical evidence demonstrating a greater loss of hearing than the 15 percent right ear loss awarded by the Office on December 12, 2005.

CONCLUSION

Appellant does not have more than 15 percent hearing loss involving the right ear.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (March 2005).

¹⁰ *See supra* note 2.

¹¹ *Id.*