

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE R. SMITH and DEPARTMENT OF JUSTICE,
Bureau of Prisons, Glynco, Ga.

*Docket No. 96-2278; Submitted on the Record;
Issued June 16, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that he is entitled to a schedule award for more than a 9 percent hearing loss of the left ear.

The Board has duly reviewed the evidence of record and finds that appellant is entitled to an additional 2 percent schedule award for hearing loss of the left ear.

In the present case, the Office of Workers' Compensation Programs accepted by decision dated February 17, 1995 that appellant, a correctional institution administrator, sustained a noise induced 4 percent hearing loss of the left ear. By decision dated October 26, 1995, an Office hearing representative found that the evidence of record did substantiate that appellant sustained tinnitus of the left ear, which caused an additional impairment of the left ear of 5 percent. The hearing representative also noted that the Office should authorize appellant's purchase of a tinnitus masker device. On April 3, 1996 appellant requested that the Office reconsider the schedule award decisions. Appellant stated that he was right ear dominant and had sustained a bilateral hearing loss. Appellant also submitted a January 10, 1996 report and audiogram from audiologist Richard D. Wright. The January 10, 1996 audiogram was thereafter reviewed on April 30, 1996 by the Office medical adviser. The medical adviser evaluated the January 10, 1996 audiogram pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Pursuant to the A.M.A., *Guides*,¹ the losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second are added up, averaged and the "fence" of 25 decibels is deducted. The fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels do not result in impairment in the ability to hear everyday sounds under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.

¹ A.M.A., *Guides* (4th ed. 1993).

The frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear, 15, 15, 25 and 45, respectively, were totaled at 100 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 25. The average 25 was reduced by 25 decibels to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent monaural loss of hearing for the right ear. The decibel losses at the above-mentioned frequencies for the left ear, 20, 15, 20 and 60, respectively, were totaled at 115 and divided by 4 to obtain the average hearing loss at those frequencies of 28.75, which was then reduced by the 25 decibel fence to equal 3.75, which was then multiplied by the established factor of 1.5 to compute a 5.63 percent monaural loss of hearing for the left ear, which was rounded up to 6 percent. The Office medical adviser concluded that the audiogram of January 10, 1996 showed a monaural hearing loss of 0 percent for appellant's right ear and 6 percent for the left ear. The medical adviser stated that adding 5 percent for tinnitus of the left ear would result in a schedule award of 11 percent, which he opined was not really significantly different from the prior figure. The medical adviser stated that a schedule award was not payable for tinnitus of the right ear. The medical adviser noted "this is ultimately a central perception, in my view, and, in any event, has not effected hearing on right to a ratable level." The Board finds that as the Office medical adviser calculated, utilizing the January 10, 1996 audiogram, appellant had an 11 percent left ear hearing loss, appellant is entitled to an additional 2 percent schedule award.

Appellant contends that he should also be compensated for tinnitus of the right ear. The Board has held that there is no basis for paying a schedule award for tinnitus unless the medical evidence establishes that the condition caused or contributed to a permanent loss of hearing,² a loss of wage-earning capacity,³ or a disturbance of vestibular function.⁴ The Board finds, however, that there is no evidence that tinnitus caused or contributed to a ratable loss of hearing of the right ear. Furthermore, the evidence does not establish that appellant's right ear tinnitus caused a loss of wage-earning capacity. Appellant also has not submitted any medical evidence to substantiate that his right ear tinnitus has caused a disturbance of vestibular function. There is no basis for paying appellant a schedule award for tinnitus of the right ear.

² *Royce L. Chute*, 36 ECAB 202 (1989).

³ *John A. Marsch*, 33 ECAB 580 (1982).

⁴ *See A.M.A., Guides*, 146 (4th ed. 1993); *see e.g. Charles H. Potter*, 39 ECAB 645 (1988).

The decision of the Office of Workers' Compensation Programs dated May 7, 1996 is hereby modified to reflect that appellant is entitled to an additional 2 percent schedule award for hearing loss of the left ear.

Dated, Washington, D.C.
June 16, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member