

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENE C. BALENTINE and TENNESSEE VALLEY AUTHORITY,
BROWNS FERRY, Decatur, AL

*Docket No. 03-1838; Submitted on the Record;
Issued September 8, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 25 percent permanent binaural hearing loss, for which he received a schedule award.

Appellant, a retired 56-year-old structural iron worker, filed a claim for benefits on March 2, 2002, claiming that he sustained a hearing loss caused by factors of his employment. He became aware that his condition was causally related to his employment on June 12, 1998. Appellant was employed with the employing establishment on an intermittent basis from April 8, 1975 until November 11, 1991, when he retired. He was exposed to loud noise produced by turbines, coal pulverizers, boiler feed pumps and steam leaks.

On June 17, 2002 the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. James O. Fordice, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

In a report dated July 1, 2002, Dr. Fordice noted findings on audiological evaluation based on a July 1, 2002 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: 25, 35, 55 and 65 decibels (dBs) in the right ear and 30, 30, 25 and 75 dBs in the left ear. Dr. Fordice recommended hearing aids. In a memorandum dated July 24, 2002, an Office medical adviser, relying on Dr. Fordice's audiogram results and calculations, determined that appellant had a 25 percent permanent binaural hearing loss.

On April 28, 2003 the Office granted appellant a schedule award for a 25 percent permanent binaural hearing loss for the period from July 1, 2002 to May 17, 2003, for a total of 46 weeks of compensation.

The Board finds that appellant has not established that he has more than a 25 percent permanent binaural hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 dBs is reduced since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions.⁴ Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. 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 binaural hearing loss.⁵

The case was referred to an Office medical adviser to apply the Office's standardized procedures to the July 1, 2002 audiogram performed for Dr. Fordice, a Board-certified otolaryngologist. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 25, 35, 55 and 60 dBs respectively. These decibels totaled to 175 and divided by 4, obtained an average hearing loss at those cycles of 43.75 dBs. The average of 43.75 dBs, when reduced by 25 dBs (the first 25 dBs were discounted as discussed above), equals 18.75 dBs, which when multiplied by the established factor of 1.5 computes a 28.13 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 30, 30, 25 and 75 respectively. These decibels amounted to 160, which, when divided by 4, obtains an average hearing loss at those cycles of 40 dBs. The average of 40 dBs, reduced by 25 dBs (the first 25 dBs were discounted as discussed above), equals 15, which when multiplied by the established factor of 1.5 amounts to a 22.50 percent hearing loss in the left ear. The Office medical adviser then multiplied the lesser loss of 22.50 percent in the left ear by 5, added this figure to the greater loss of 28.13 and divided the total by 6 to arrive at a 23.44 percent binaural hearing loss. The Office medical adviser properly calculated appellant's hearing loss and, based

¹ 5 U.S.C. § 8107.

² *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides* 250 (5th ed. 2001).

⁵ *Id.* See also *Daniel C. Goings*, *supra* note 2.

on this calculation, the Office granted appellant a schedule award for a binaural hearing loss of 25 percent.⁶

The Board finds that the medical evidence does not establish that appellant has more than a 25 percent total binaural hearing loss for which he received a schedule award. The Board will affirm the April 28, 2003 Office decision granting a schedule award for 25 percent permanent binaural hearing loss.

The April 28, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 8, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ The Office granted appellant a schedule award for an impairment which was slightly higher than that calculated by the Office medical adviser.