

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCIAN E. PALMER and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY INSPECTION SERVICE, Mayfield, KY

*Docket No. 01-1616; Submitted on the Record;
Issued March 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

In a decision dated July 20, 2000, the Office of Workers' Compensation Programs awarded appellant a schedule award for a two percent binaural hearing loss. This determination was based upon the January 12, 2000 calculation of the Office's medical adviser, which, in turn was made on the basis of the December 22, 1999 audiological evaluation and report submitted by Dr. Shawn C. Jones, a Board-certified otolaryngologist and an Office referral physician. The Office awarded compensation for a period of four weeks, beginning on December 21, 1999 and continuing through January 17, 2000. Following an oral hearing, held at appellant's request, by decision dated February 22, 2001, an Office hearing representative affirmed the schedule award.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than a two percent binaural hearing loss for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 necessitates 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*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

Evaluation of Permanent Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, 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 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.⁸

The Office medical adviser applied the Office’s standardized procedures to the December 21, 1999 audiogram performed for Dr. Jones. Testing for the right ear revealed decibel losses of 15, 20, 15 and 55 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss at those cycles of 26.25. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels for the right ear which was multiplied by the established factor 1.5 to compute an 1.88 percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 25, 15, 10 and 55 decibels respectively. These decibel losses were totaled at 105 decibels and divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels which was multiplied by the established factor 1.5 to compute an 1.88 percent loss of hearing for the left ear. To determine the binaural loss, the 1.88 percent loss of the right ear was multiplied by 5 to total 9.4, which was then added to the loss of the left ear of 1.88 to equal 11.28. This total was then divided by 6 to arrive at 1.88 which was rounded to 2 for a total binaural loss of 2 percent.

Accordingly, pursuant to the Office’s standardized procedures, the Office medical adviser determined that appellant had a two percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Jones’ December 22, 1999 report and the accompanying December 21, 1999 audiometric evaluation that Dr. Jones reviewed. This resulted in a calculation of a two percent binaural hearing loss. The Board notes that, subsequent to the hearing, appellant

³ *Id.*

⁴ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁵ A.M.A., *Guides* 224-25 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

submitted a new audiogram dated January 16, 2001, which contained no signature or initials and was unaccompanied by a physician's report. The Board has held that an audiogram prepared by an audiologist must be certified by a physician as being accurate before it can be used to determine the percentage loss of hearing. It is appellant's burden to submit a properly certified audiogram if appellant objects to the audiogram used by the Office to determine the degree of hearing loss.⁹ Thus, as there is no indication on the audiogram that it was either performed by or certified by a physician, the Office was not required to rely on it in determining permanent impairment.

The decisions of the Office of Workers' Compensation Programs dated February 22, 2001 and July 20, 2000 are hereby affirmed.¹⁰

Dated, Washington, DC
March 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *James A. England*, 47 ECAB 115 (1995).

¹⁰ The Board notes that subsequent to the Office's February 22, 2001 decision and prior to appellant's request for an appeal of this decision, he submitted additional medical evidence to the Office and asked that it be reviewed to determine whether it was beneficial to his claim. However, the Office did not process this request prior to the docketing of the present appeal.