

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. BURROWS and DEPARTMENT OF THE NAVY,
NAVAL TRAINING CENTER, Great Lakes, Ill.

*Docket No. 96-1283; Submitted on the Record;
Issued April 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 13 percent binaural sensorineural hearing loss, for which he has received a schedule award.

On April 13, 1993 the Office of Workers' Compensation Programs accepted that appellant had sustained binaural sensorineural hearing loss in the performance of duty, causally related to factors of his federal employment. Appellant retired from federal service on June 30, 1995.

A May 20, 1994 audiogram demonstrated that appellant had a 2.18 percent binaural loss of hearing. On September 12, 1995 the Office granted appellant a schedule award for a two percent binaural hearing loss.

Thereafter appellant requested reconsideration contending that he had a greater binaural loss of hearing, and he submitted employing establishment noise data and multiple other audiograms dating from 1983 through February 27, 1995. The February 27, 1995 audiogram was performed by a certified hearing conservationist/audiologist and contained all of the indices of trustworthiness including the calibration data. The February 1995 audiogram showed the same decibel threshold losses at 1,000 Hz and at 3,000 Hz on the left and at 2,000 Hz on the right as did his June 20, 1994 audiogram, and progressive decibel threshold losses at the other measured frequencies. The June 1994 audiogram showed the same losses at 3,000 Hz in the left ear and at 3,000 Hz in the right ear as did his August 30, 1993 audiogram. Appellant's August 1993 audiogram did not show any significant threshold shifting, defined as a change of 10 decibels or more according to the military hearing conservation program guidelines and the American Society of Hearing Conservationists standards, from his December 9, 1988 baseline audiogram. As these audiograms were annual examinations as part of the employing establishment's formal hearing conservation program, they contained full disclosure of calibration data and examiner certification.

On January 24, 1996 the Office referred appellant's case record and a statement of accepted facts to an Office medical adviser, Dr. Janet Elliot, a Board-certified pediatrician, for an opinion on whether appellant had sustained more than a two percent binaural loss of hearing. On February 2, 1996 Dr. Elliot used the employing establishment's June 20, 1994 audiogram and calculated that appellant had a 13.1 percent binaural loss of hearing, and then using the February 27, 1995 audiogram, calculated that appellant had a 20 percent binaural loss of hearing. On the worksheet Dr. Elliot used, she incorrectly annotated that no calibration data was supplied for this audiogram. By report dated February 4, 1996, Dr. Elliot noted that there was considerable difference between appellant's February 27, 1995 audiogram and the May 20, 1994 audiogram upon which his initial schedule award was based, and she concluded that she must therefore assume that the most recent audiogram was incorrect. She did not address the June 20, 1994 audiogram which was more consistent with the February 27, 1995 audiogram than it was with the May 20, 1994 audiogram upon which appellant's initial schedule award had been based, nor did she comment on the remainder of the audiograms of record which were also consistent with the February 27, 1995 audiogram and showed predictable, as opposed to unusual, hearing loss progression since 1983, including the reestablishment of a new baseline audiogram in 1988.

The Office found that appellant had a 13 percent binaural loss of hearing, but did not explain why it was using the June 20, 1994 audiogram instead of the February 27, 1995 audiogram obtained closer to the time of appellant's retirement. On February 13, 1996 the Office granted appellant an additional 11 percent loss of hearing for a total binaural loss of hearing schedule award of 13 percent.

The Board finds that this case is not in posture for decision.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association *Guides to the Evaluation of Permanent Impairment* (2nd ed. 1984) using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. The losses at each frequency are added and averaged and the "fence" of 25 decibels is deducted since, as the *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.¹ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.² 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.³ The Board has concurred in the Office's uses of this standard for evaluating hearing losses for schedule award purposes.⁴

The Office has set forth requirements for the medical evidence to be used in evaluating occupational hearing loss claims. The requirements, as set forth in the Office's Federal (FECA)

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (Fourth edition 1993).

² *Id.*

³ *See also* FECA Program Memorandum No. 272 (issued February 24, 1986).

⁴ *Daniel C. Goings*, 37 ECAB 781 (1986).

Procedure Manual provide that the employee undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otological examination be performed by different individuals as a method of evaluating reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; a rationalized medical opinion regarding the relationship of the hearing loss to the employment-related noise exposure; and a statement on the reliability of the tests conducted.⁵ The medical evidence submitted by appellant, although not including an otolaryngologist's report, was obtained as part of the employing establishment's health clinic hearing conservation screening, and is suggestive that appellant might have a greater loss as demonstrated by his progressive hearing losses dating from 1983, which requires further development by the Office.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶ Although appellant's audiograms contain insufficient rationale to discharge his burden of proving by the weight of reliable, substantial and probative evidence that he sustained a permanent hearing loss impairment in excess of 13 percent, they constitute substantial, uncontradicted evidence in support of appellant's claim sufficient to require further development of the case record by the Office.⁷

The Office should further develop the case by referring the case to a Board-certified otolaryngologist for otologic examination and audiometric evaluation, to establish the extent of his employment-related hearing loss.

⁵ *Joshua A. Holmes*, 42 ECAB 231 (1990); *George L. Cooper*, 40 ECAB 296 (1988).

⁶ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Consequently, the decision of the Office of Workers' Compensation Programs dated February 13, 1996 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
April 28, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member