

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSIE L. HARRIS and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Pensacola, Fla.

*Docket No. 97-966; Submitted on the Record;
Issued December 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On September 27, 1991 appellant, then a 59-year-old aircraft painter leader, filed a notice of occupational disease, alleging that he sustained a hearing loss as a result of noise exposure in his federal employment. Appellant stopped working on August 3, 1993.

The Office of Workers' Compensation Programs subsequently referred appellant, along with a statement of accepted facts, to Dr. John L. Pallin, a Board-certified otolaryngologist, for an evaluation. Dr. Pallin reviewed an audiogram, and determined that appellant suffered a hearing loss. He found, however, that the hearing loss was related to the normal progression of presbycusis rather than factors of appellant's federal employment. Dr. Pallin further indicated that his conclusion was based on the fact that he did not know the noise levels of the activities performed by appellant at his job. The Office medical adviser subsequently indicated his agreement with Dr. Pallin's conclusion regarding the cause of appellant's hearing loss.

By decision dated August 26, 1994, the Office denied appellant's claim for compensation because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

Appellant subsequently requested reconsideration. In support, appellant submitted an October 7, 1994 report from Dr. James M. Carlisle, an otolaryngologist, in which the physician noted a 27-year noise exposure to high speed sanders and rivet drivers. Dr. Carlisle indicated that an audiogram indicated a bilateral moderate to severe sensorineural hearing loss. Appellant also submitted a September 16, 1994 report from Dr. R.E. Bowie, a Board-certified otolaryngologist. Dr. Bowie diagnosed a moderate primarily high frequency sensorineural hearing loss with good preservation of speech discriminations consistent with noise exposure history. He relied on the same audiogram interpreted by Dr. Carlisle.

The Office medical adviser subsequently indicated that he had changed his opinion regarding the cause of appellant's hearing loss. In a report dated July 1, 1996, the medical adviser reviewed Dr. Pallin's June 30, 1994 audiogram and found a significant worsening of appellant's hearing. He noted that appellant did have potential exposure to hazardous noise during his federal employment and concluded that appellant had a noise-induced hearing loss due, in part, to his federal employment. The Office medical adviser then relied on Dr. Pallin's June 30, 1994 audiogram to find that appellant was entitled to a nine percent schedule award for his bilateral sensorineural hearing loss.

By decision dated July 29, 1996, the Office vacated its August 26, 1995 decision. In an accompanying memorandum, the Office noted that it accepted that appellant sustained a bilateral hearing loss. On August 22, 1996, appellant also received a schedule award for a nine percent permanent bilateral hearing loss.

On October 10, 1996 appellant requested reconsideration. In support, appellant submitted a report from an audiologist.

By decision dated November 18, 1996, the Office found that because appellant neither raised substantive legal questions nor submitted new and relevant evidence, that his request for reconsideration was insufficient to warrant a review of its prior decision.

On December 26, 1996 appellant again requested reconsideration. In support, appellant again submitted evidence from an audiologist. Appellant subsequently sent additional reports from his audiologist.

By decision dated February 5, 1997, the Office reviewed the case on its merits and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that its medical adviser used Dr. Pallin's June 30, 1994 audiogram in determining the permanent hearing loss appellant suffered in both ears. The Office noted that appellant failed to submit any medical evidence establishing that appellant suffered a greater hearing loss.

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

In the instant case, the Office relied on the opinion of its medical adviser in determining that appellant established a nine percent binaural hearing loss. The medical adviser applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the June 30, 1994 audiogram reviewed by Dr. Pallin, a Board-certified otolaryngologist. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added and averaged, and the fence of 25 decibels was deducted. The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For the levels recorded in the right ear on Dr. Pallin's June 30, 1994 audiogram of 10, 25, 40 and 45, the above formula derived a 7.5 percent monaural hearing loss, and for levels recorded in the left ear of 15, 30, 45 and 50, the above formula derived a 15 percent hearing loss. For the binaural hearing loss, the loss in each ear was calculated using the above formula. The lesser loss was then multiplied by five and added to the greater loss. This amount was then divided by six to arrive at the total binaural

hearing loss. According to the accepted formula, these combined to total a nine percent binaural hearing loss.

Dr. Carlisle, an otolaryngologist, and Dr. Bowie, a Board-certified otolaryngologist, however, interpreted a September 16, 1994 audiogram which indicated that the frequency losses in the right ear at 500, 1,000, 2,000, and 3,000 hertz were 20, 30, 50 and 50, respectively, and that the losses for the left ear were 25, 30, 55 and 60, respectively. Based on the formula for determining binaural hearing loss described above, this audiogram supports a binaural hearing loss of 20 percent. A conflict therefore exists between the opinions of Dr. Pallin and the Office medical adviser which support a 9 percent binaural hearing loss, and the opinions of Drs. Carlisle and Bowie which support a 20 percent hearing loss. When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act,¹ to resolve the conflict in the medical opinion,

As an unresolved conflict exists in the medical opinion evidence, this case must be referred to an impartial medical specialist. After such further development, the Office shall issue a *de novo* decision.

The decision of the Office dated February 5, 1997 is set aside and this case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
December 29, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹ 5 U.S.C. § 8123(a); *see Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).