U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL V. RICO and DEPARTMENT OF THE AIR FORCE, NATIONAL GUARD BUREAU, Phoenix, Ariz.

Docket No. 97-743; Submitted on the Record;
Issued October 28, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than a 36 percent hearing loss in his right ear for which he received a schedule award.

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

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.[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 of Workers' Compensation Programs.[2] However, as a matter of administrative practice the Board has stated, "For consistent results and to ensure equal justice under 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."[3]

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).[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

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[1] 5 U.S.C. § 8107.

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

[3] *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

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

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

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 five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

On August 22, 1996 the Office medical adviser reviewed the otologic and audiologic testing performed on May 16, 1996 by Dr. Bernard J. Miller, a Board-certified otolaryngologist, and applied the Office's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 35, 55, 40 and 65 respectively. These decibel losses were totaled at 195 decibels and were divided by 4 to obtain the average hearing loss of 48.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 23.75 which was multiplied by the established factor of 1.5 to compute a 35.6 percent hearing loss in the right ear. The Office medical adviser did not provide a calculation for hearing loss in appellant's left ear indicating that this hearing loss was most consistent with nonwork-related chronic otitis media (postsurgical repair) with persistent perforation.[10] By decision dated November 25, 1996, the Office granted appellant an award of compensation for a 36 percent hearing loss of his right ear.

Although the Office medical adviser stated that the hearing loss in appellant's left ear was entirely nonwork related, the medical evidence shows that the hearing loss in appellant's left ear was related, in part, to exposure to hazardous noise at work. Dr. Miller indicated in his May 16, 1996 evaluation that appellant had a bilateral sensorineural hearing loss with a small conductive component in the left ear and noted that most of his hearing loss was due to industrial exposure. The Office medical adviser improperly attempted to isolate that portion of appellant's permanent hearing loss which is directly attributable to employment-related noise exposure when he determined the percentage of the schedule award for permanent hearing loss to which appellant is entitled. The Federal (FECA) Procedure Manual of the Office indicates:

> "A percentage evaluation of impairment is provided in terms of the affected member of function of the body.... The percentage should include those

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Donald A. Larson*, 41 ECAB 947, 951 (1990).

[10] Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 60, 65, 70 and 85 respectively.

conditions accepted by [the Office] as job related and *any preexisting permanent impairment of the same member or function*."[11]

It is well established that, in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[12] As noted by Larson, this is "sometimes expressed by saying that the employer takes the employee as he finds him."[13]

When the above-noted standards are applied, it is clear that appellant is entitled to receive compensation for both his preexisting hearing loss and his employment-related hearing loss, to include the hearing loss in his left ear. Therefore, the case will be remanded to the Office for calculation of appellant's work-related binaural hearing loss in accordance with the relevant standards delineated above to be followed by an appropriate decision.[14]

The decision of the Office of Workers' Compensation Programs dated November 25, 1996 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

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

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3a(3) (October 1990). (Emphasis added.)

[12] *Howard P. Lane*, 36 ECAB 107, 108-09 (1984).

[13] A. Larson, *The Law of Workers' Compensation* §§ 12.20, 58.21 (November 1993). "Nothing is better established in compensation law than the rule that, when industrial injury precipitates disability from a latent prior condition ... the entire disability is compensable, and ... no attempt is made to weigh the relative contribution of the accident and the preexisting condition to the final disability or death." Larson, § 59.22.

[14] The Office should also authorize hearing aids in that Dr. Miller recommended such authorization.