

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTOR PIVIDORI and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Indiana, Pa.

*Docket No. 97-2015; Submitted on the Record;
Issued April 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained more than a nine percent hearing loss in his left ear for which he received a schedule award.

On December 28, 1995 appellant, then a 72-year-old electrical inspector, filed a notice of occupational disease and claim for compensation alleging that he sustained a hearing loss as a result of factors of his federal employment. Appellant resigned from the employing establishment on June 12, 1979. In a statement of accepted facts dated June 12, 1996, the Office of Workers' Compensation Programs noted that appellant worked for the employing establishment from June 13, 1971 through January 11, 1975 and then from January 18, 1976 through June 12, 1979, during which time he was exposed to hazardous noise from mining machinery. The Office further noted that appellant first became aware of his hearing loss on April 6, 1994 after an audiogram was explained to him. The employing establishment indicated that hearing protection was first provided in June 1978.

At the request of the Office, the employing establishment submitted copies of appellant's periodic fitness-for-duty examination reports, which included audiograms dated November 18, 1975 and November 21, 1978, that were interpreted as normal.¹

By letter dated July 17, 1996, the Office referred appellant to Dr. C. Thomas Yost, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation, along with a review of the medical records and the statement of accepted facts. In his report dated August 5, 1996, Dr. Yost noted that he evaluated appellant on August 2, 1996 and diagnosed that appellant had a bilateral high frequency sensorineural hearing loss worse in the left ear than in the right

¹ The Office noted in the statement of accepted facts that there were audiograms submitted by the employing establishment dated June 17, 1975 and September 27, 1978 and additional audiograms dated March 29, 1982, March 3, 1986, 1989, February 25, 1991 and April 4, 1994. The record before the Board does not include those tests.

ear. He opined that appellant could have sustained hearing loss from noise exposures from 1971 through 1979, but he noted that an audiogram shows the cumulative result of noise exposure throughout the years and does not identify which noise exposures caused which percentage of today's total measured loss. Two audiograms dated August 2, 1996, accompanied his report. According to Dr. Yost, the first trial thresholds were invalid due to poor response criteria, but he considered the second trial thresholds to be highly reliable.

In an August 21, 1996 report, an Office medical adviser reviewed the August 12, 1996 audiograms and calculated appellant's percentage of hearing loss based on the second trial test as 0 percent monaural loss in the right ear and 9.375 percent monaural loss in the left ear for a 0 percent binaural loss. He recommended a hearing aid for the left ear only.

In a decision dated August 23, 1996, the Office accepted appellant's claim for a left ear monaural hearing loss and approved a hearing aid for the left ear.

Thereafter, the Office issued an award of compensation on October 18, 1996, in which appellant was granted a schedule award for nine percent left monaural hearing loss in the left ear. The Office found that appellant had no ratable hearing loss in the right ear. The period of the award ran from August 2 to September 3, 1996.

By letter dated November 20, 1996, appellant requested reconsideration and requested additional information as to how her schedule award was computed.

In a decision dated February 14, 1997, the Office denied appellant's request for merit review. In response to questions presented in appellant's November 18, 1996 letter, the Office forwarded a "corrected" copy of the October 18, 1996 schedule award,² copies of the August 2, 1996 audiograms by Dr. Yost, and a copy of the Office audiologist's report dated August 2, 1996, along with Office guidelines for computing schedule awards for hearing loss.

The Board finds that appellant does not have greater than nine percent hearing loss in his left ear for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.³ 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 determinations is a matter which rests in the sound discretion of the Office.⁴ However, as a matter of administrative practice and to insure consistent results to all claimants, the Office has adopted and the Board

² The corrected copy changes the number of weeks of compensation from 32.76 to 4.68 weeks. In view of the fact that the Office essentially modified its October 18, 1996 award and reissued that decision, the Board will consider the February 14, 1997 Office decision to be a decision on the merits of the claim.

³ 5 U.S.C. § 8107.

⁴ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁵

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 hertz (Hz). The losses at each frequency are added up and averaged and a “fence” of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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 the binaural hearing loss.⁶ The Board has concurred in the Office’s use of this new standard for evaluating hearing losses for schedule award purposes.⁷

In determining the percentage of appellant’s hearing loss, the Office medical adviser applied the Office’s standardized procedures to the audiogram obtained by Dr. Yost on August 2, 1996. Testing for the left ear at 500, 1,000, 2,000 and 3,000 Hz revealed hearing threshold levels of 5, 10, 45 and 65 decibels respectively. These losses total 125 decibels for an average level of 31.25 decibels. Reducing this average by 25 decibels (as discussed earlier) leaves a balance of 6.25 decibels, which when multiplied by 1.5 yields a compensable hearing loss average of 9 percent.

Testing for the right ear at 500, 1,000, 2,000 and 3,000 Hz revealed hearing threshold levels of 5, 10, 5 and 25 decibels respectively. These losses total 45 decibels for an average of 11, 25 decibels. Reducing this average by 25 decibels (as discussed earlier) leaves a balance of 0 decibels, meaning that no impairment is presumed to exist in appellant’s ability to hear, with his right ear, everyday sounds under everyday listening conditions.

The medical evidence reveals that, after applying the relevant standards of the A.M.A., *Guides* and rounding to whole figures, appellant has a nine percent monaural hearing loss in his left ear. The schedule award provision of the Act, specifies the number of weeks of compensation to be awarded for loss of hearing: for the total loss of hearing in one ear, the Act provides for 52 weeks of compensation. Any loss less than a total loss is compensated at a proportionate rate, so a nine percent monaural loss equals 4.68 weeks of compensation or nine percent of 52 weeks

Thus, the Board finds that the Office properly issued a schedule award only for nine percent hearing loss in the left ear.

⁵ *Henry L. King* 25 ECAB 39 at 44 (1973); *August M. Buffa*, 12 ECAB 324 at 325 (1961).

⁶ See A.M.A., *Guides* 224 (4th ed. 1993); FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Daniel C. Goings*, *supra* note 4.

The decision of the Office of Workers' Compensation Programs dated February 14, 1997 is affirmed.

Dated, Washington, D.C.
April 20, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member