U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVE M. JONES and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION,
Barbourville, KY

Docket No. 98-2004; Submitted on the Record;
Issued December 3, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are whether appellant has a ratable loss of hearing and whether the Office of Workers' Compensation Programs properly refused to authorize the purchase of hearing aids.

On May 20, 1996 appellant, then a 43-year-old coal mine safety and health inspection supervisor, filed a claim for a hearing loss which he attributed to his exposure to noise in the performance of his duties. The Office referred appellant and his past medical records to Dr. Braxton Cann, a Board-certified otolaryngologist, for an evaluation of his hearing. Based on Dr. Cann's August 5, 1996 report and audiogram, as reviewed by an Office medical adviser, the Office, by decision dated August 27, 1996, found that appellant did not have a ratable hearing loss and that he was not entitled to hearing aids or other medical benefits.

Appellant requested a hearing, and submitted a November 10, 1997 report from an audiologist. By decision dated January 7, 1998, an Office hearing representative found that appellant did not have a ratable hearing loss, that he was not entitled to hearing aids at the Office's expense, but that he was entitled to annual hearing evaluations, as recommended by Dr. Cann. Appellant requested reconsideration, and submitted a report dated January 28, 1998 from Dr. Elvis R. Thompson, a Board-certified otolaryngologist. By decision dated March 4, 1998 the Office refused to modify its prior decisions.

The Board finds that the evidence does not establish that appellant has a ratable hearing loss.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

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 Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

The Office currently evaluates industrial hearing loss in accordance with the standards contained in the fourth edition of the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps), the losses at each frequency are added. If the total is over 100, the loss is determined by reference to Table 1 of Chapter 9 of the 4th edition of the A.M.A., *Guides*. The A.M.A., *Guides* points out: "If the average of the hearing levels at 500, 1000, 2000 and 3000 cps is 25 dB or less, according to 1989 American National Standard Institution standards, no impairment is considered to exist in the ability to hear everyday sounds under everyday listening conditions."

The audiogram done for Dr. Cann showed decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second of 20, 15, 20 and 30 for the right ear and 10, 10, 15 and 35 for the left ear. An Office medical adviser added these losses and noted that the result of 85 on the right and 70 on the left reflected a 0 percent loss in each ear under the tables of the A.M.A., *Guides*. The Board therefore finds that appellant does not have a ratable hearing loss that would entitle him to a schedule award under the Act.

After the Office's August 27, 1996 decision finding that he did not have a ratable hearing loss, appellant submitted a November 10, 1997 audiogram from an audiologist and later submitted a January 28, 1998 report from a Board-certified otolaryngologist stating that he had confirmed the November 10, 1997 findings of the audiologist. In a report dated February 24, 1998, an Office medical adviser pointed out that the November 10, 1997 audiogram did not indicate when the equipment used was calibrated, that the audiologist did not indicate the length of time appellant had been free of exposure to noise before the testing, and that Dr. Thompson did not examine appellant.

While the Office must provide rationale for selecting one audiogram over another as the basis for rating a claimant's hearing loss, the Office is justified in selecting an audiogram that complies with the Office's requirements as set forth in its procedure manual over one that does not.[4] These requirements include the performance of the audiological evaluation and the otological examination by different individuals, a certification that the audiological equipment has been calibrated in the year preceding the testing and a showing that appellant was not exposed to loud noise within the 16 hours preceding the testing.[5] As Dr. Cann's audiogram was the only one that complied with the Office's requirements, the Office properly used it to rate appellant's hearing loss.

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

[4] *Halley Albertson*, 31 ECAB 901 (1980).

[5] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

The Board further finds that the Office properly refused to authorize the purchase of hearing aids.

Section 8103(a) of the Act states in pertinent part "the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[6]

No physician, as defined in the Act,[7] has prescribed or recommended hearing aids for appellant. An Office medical adviser, who is a physician, declined to authorize hearing aids in an August 26, 1996 report, stating that appellant's "hearing is excellent in normal speech frequencies." The audiologist who performed the November 10, 1997 audiogram stated that appellant was "a candidate for binaural amplification." An audiologist, however, is not a "physician" within the meaning of the Act,[8] and the audiologist's role is limited to providing an opinion concerning the measurement of a claimant's hearing loss.[9]

The decisions of the Office of Workers' Compensation Programs dated March 4 and January 7, 1998 are affirmed.

Dated, Washington, D.C.
December 3, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] 5 U.S.C. § 8103(a).

[7] This definition is found at 5 U.S.C. § 8101(2).

[8] *Herman L. Henson*, 40 ECAB 341 (1988).

[9] *Warren Guidry*, 39 ECAB 1421 (1988).