

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERT A. CARLTON and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL BASE, Philadelphia, PA

*Docket No. 98-583; Submitted on the Record;
Issued November 2, 1999*

DECISION and ORDER

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

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

On March 3, 1995 appellant, then a 58-year-old engineer, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He also stated that he first became aware that he had a hearing loss problem and related it to his employment on March 2, 1995. On the reverse side of the form, the employing establishment indicated that appellant had not stopped work.

Accompanying the claim, the employing establishment submitted various documents, including employing establishment health records covering the period July 1989 to March 1995; and audiograms performed for the employing establishment covering 1962 to March 2, 1995.

The Office of Workers' Compensation Programs referred appellant to Dr. Herbert Kean, an otolaryngologist, for an examination and evaluation of medical records. In a report dated August 21, 1995, Dr. Kean reported the findings of his August 7, 1995 examination of appellant and stated that examination of the ears showed normal ear canals and drums. Dr. Kean went on to say that a hearing test revealed a high-frequency hearing loss bilaterally, affecting frequencies 3000 through 8000 hertz (Hz) in the left ear and 2000 through 8000 Hz in the right ear. He also stated that appellant had speech discrimination scores of 100 percent bilaterally at a test level of 60 in the right and 50 in the left and speech reception thresholds of 20 in the right and 10 in the left. Dr. Kean also stated that "[Appellant] has a high-frequency hearing loss which would benefit from binaural amplification. His hearing test when he began employment in 1962 showed a high-frequency loss bilaterally at 4000 Hz. There has been progression of that loss in other frequencies, however, in the right ear, 400 Hz has remained stable. In the left ear, he had a 25 [percent] decibel [dB] loss at 4000 Hz and that has gotten worse." He further stated that "In my opinion, [appellant] had an audiogram which is consistent with occupational noise. There

are no audiograms available between 1986 and 1994. There has been some progression between 1986 and 1994, but there has been no progression since 1994.”

Dr. Kean’s found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed: in the right ear dBs levels of 15, 15, 30 and 40, respectively; and in the left ear, decibel levels of 20, 10, 15 and 45, respectively.

On April 29, 1995 a district medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Kean to determine that appellant had a nonratable hearing loss bilaterally. The district medical adviser indicated the date of maximum medical improvement was August 7, 1995.

By decision dated October 9, 1995, the Office accepted appellant’s claim for a hearing loss due to his employment-related noise exposure. The Office determined, however, that appellant’s hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees’ Compensation Act. The Office also found that appellant was entitled to medical benefits.

By letter dated November 3, 1995, appellant requested a hearing before an Office hearing representative. The hearing was held on October 23, 1996. Submitted at the hearing was appellant’s recalculation of his hearing loss.

In a decision dated December 2, 1996, the hearing representative found that appellant had a zero percent hearing loss in both ears and that he was not entitled to a schedule award.¹ The hearing representative affirmed the Office’s decision dated October 9, 1995.

By letter dated February 17, 1997, appellant’s representative requested reconsideration of the December 2, 1996 decision. In support of the request for reconsideration, appellant submitted a copy of Dr. Kean’s August 21, 1995 report and August 7, 1995 audiogram; a copy of the recalculation of hearing loss submitted by appellant at the hearing; and a copy of audiometric hearing loss covering 1962 to 1963.

By decision dated August 11, 1997, after a merit review, the Office denied modification of the prior decision.²

The Board finds that appellant does not have a ratable hearing loss.

The schedule award provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.³

¹ The hearing representative noted that the district medical adviser erroneously indicated that the sum of the frequencies measured for the left ear totaled 100 instead of 90, but the error did not change the ultimate outcome.

² The Board notes that the Office stated that a merit review was conducted since new evidence was submitted as well as new argument. However, all evidence submitted was already of record, and the argument was presented at the hearing.

³ 5 U.S.C. § 8107.

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.⁴ However, as a matter of administrative practice the Board has stated “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.”⁵

Under the A.M.A., *Guides*, hearing loss is evaluated by determining dBs loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a “fence” of 25 dBs is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions.⁶ 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.⁷

The Office medical adviser applied the Office’s standardized procedures to the August 7, 1995, audiogram performed for Dr. Kean. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dBs levels of 15, 15, 30 and 40 respectively. These dBs were totaled at 100 and were divided by 4 to obtain the average hearing loss at those cycles of 25 dBs. The average of 25 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dBs levels of 20, 10, 15 and 45, respectively. These dBs were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 dBs. The average of 22.5 was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal a negative number, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office’s standardized procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided in Dr. Kean’s report dated August 21, 1995 and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above.

In its decision on reconsideration, the Office addressed appellant’s argument that his hearing was normal prior to his federal civilian employment and since he had hearing loss as a result of occupational factors, he is entitled to a schedule award. The Office went on to explain

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

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

⁶ A.M.A., *Guides* at 224.

⁷ *Id.*; see also *Daniel C. Goings*, *supra* note 3 at 784.

how hearing loss is calculated under the Act. The Board concurs with that explanation. The calculation of hearing loss is also explained in this decision.

The August 11, 1997 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Dated, Washington, D.C.
November 2, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member