

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WARREN C. STARKEY and DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD
Bremerton, WA

*Docket No. 99-80; Submitted on the Record;
Issued April 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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

On October 14, 1997 appellant then a 51-year-old pipefitter planner, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that his hearing loss was caused by exposure to hazardous noise levels in the course of his federal employment. He stated that he first became aware of a hearing loss injury on September 9, 1992, but was unaware at that time that a claim could be filed. On the reverse of the form, the employing establishment indicated that appellant had not stopped work. Medical and factual records provided by the employing establishment included test results from periodic audiograms performed by the employing establishment between July 14, 1982 and October 3, 1997 and documents indicating that appellant was exposed to loud noise at work.

By letter dated March 30, 1998, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts to Dr. William T. Ritchie, a Board-certified otolaryngologist, for otologic examination and audiological evaluation.

Dr. Ritchie performed an otologic evaluation of appellant and audiometric testing was conducted on his behalf on April 20, 1998. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear - 0, 0, 15 and 70 decibels; left ear - 0, 0, 10 and 50 decibels.

In his report, Dr. Ritchie noted that appellant has a bilateral, sensorineural hearing loss, a type of hearing loss that was compatible with a noise-induced hearing loss. He concluded that, at the present time, however, that appellant does not have a ratable hearing loss.

In a report dated June 18, 1998, an Office medical consultant reviewed the medical record, including the April 20, 1998 audiogram submitted by Dr. Ritchie. Applying the Office's

standardized guidelines to the April 20, 1998 findings, the Office medical consultant determined that appellant did not have a ratable hearing loss.

By letter decision dated June 25, 1998, the Office determined that, under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant did not have a ratable hearing loss.

The Board finds that appellant has not sustained a ratable hearing loss causally related to factors of his federal employment.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.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 determination is a matter which rests in the sound discretion of the Office.² 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 a uniform standard applicable to all claimants.³ The A.M.A., *Guides* has been adopted by the Office,⁴ and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

Under the A.M.A., *Guides*,⁶ hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. 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 sounds in everyday listening conditions.⁷ 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.⁸

The medical evidence of record does not support appellant's claim that he sustained a ratable hearing loss.

The Office medical consultant applied the Office's standardized procedures to the April 20, 1998 audiogram obtained by Dr. Ritchie. Testing for the right ear at the frequency

¹ 5 U.S.C. § 8107.

² See *Arthur E. Anderson*, 43 ECAB 691 (1992).

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

⁴ FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁵ *Danniel C. Goings*, 37 ECAB 781 (1986).

⁶ A.M.A., *Guides* (4th ed. 1993).

⁷ *Id.* at 224.

⁸ *Id.*; see also *Danniel C. Goings*, *supra* note 5.

levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 0, 0, 15 and 70 decibels respectively. These losses were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels 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 hertz revealed losses of 0, 0, 10 and 50 decibels respectively. These losses were totaled at 60 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 15 decibels. The average of 15 decibels was then reduced by 25 decibels, as discussed above, to equal 0 which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the 0 by 5 to equal 0 which was added to 0. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical consultant applied the proper standards, applicable to all employees in hearing-loss claims under the Act,⁹ to the findings stated in Dr. Ritchie's April 20, 1998 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram¹⁰ indicating that appellant has a compensable hearing loss. Thus, while appellant has shown that he does have an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards.

The June 25, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 17, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁹ See 5 U.S.C. § 8107(13).

¹⁰ See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).