

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY W. PARSONS and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 00-320; Submitted on the Record;
Issued December 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained more than four percent binaural hearing loss (both ears) for which he has received a schedule award.

On February 1, 1999 appellant, then a 45-year-old materials expediter, filed an occupational disease claim alleging that he had sustained hearing loss in both ears as a result of noise exposure in his federal employment. In support of his claim appellant submitted a series of audiograms dating from 1984 through 1998.

On April 27, 1999 the Office of Workers' Compensation Programs referred appellant, together with a statement of accepted facts and his medical record, to Dr. Michael Jaindl, a Board-certified otolaryngologist, for an audiologic and otologic evaluation. He performed an otologic evaluation of appellant on May 17, 1999 and audiometric testing was conducted on his behalf on the same date. In his May 17, 1999 report, Dr. Jaindl stated that the auditory assessment revealed 20 decibels of high frequency hearing loss at 3000 cycles per second which did not exceed predicted loss due to presbycusis or age-related hearing loss. In comparing these results to a 1984 hearing loss evaluation, he concluded that appellant had a very mild increase in high frequency sensorineural hearing loss during the employment period. While Dr. Jaindl indicated that there had been enough workplace exposure as a federal employee to cause this additional loss, he opined that this loss was not due to exposure encountered in appellant's federal employment, explaining again that the loss during the employment period had not been significant. He did not comment on whether appellant would benefit from the use of hearing aids.

On June 27, 1999 an Office medical adviser reviewed Dr. Jaindl's report and audiometric test results and noted that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 10, 20, 25 and 55 decibels; left ear 15, 15, 25 and 65 decibels. After applying the Office's current standards for evaluating hearing loss to the results of the May 17, 1999 audiologic tests, the Office medical adviser determined that appellant had a four percent bilateral hearing loss. In his narrative report, the Office medical adviser noted

Dr. Jaindl's opinion that appellant's minimal degree of hearing loss during his federal employment did not exceed the degree of loss which could be attributed to presbycusis. However, because a portion of the loss could be due to noise exposure at work and there is no method under Office procedures to apportion hearing loss, all of the hearing loss should be considered employment related. The Office medical adviser additionally noted that "hearing aids were not recommended by Dr. Jaindl" and declined to authorize their purchase.

On July 21, 1999 the Office granted appellant a schedule award for a four percent binaural hearing loss and did not authorize the purchase of hearing aids. The period of the award ran for eight weeks from May 17, 1999, the date of the audiogram performed for Dr. Jaindl, to July 11, 1999.

The Board finds that appellant has no more than a four percent binaural hearing loss for which he received a schedule award.

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 the 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.² 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."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*.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 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

¹ 5 U.S.C. § 8107.

² *Kenneth E. Leone*, 46 ECAB 133 (1994).

³ *Id.*

⁴ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁵ A.M.A., *Guides* 224 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

The Office medical adviser applied the Office's standardized procedures to the May 17, 1999 audiogram performed for Dr. Jaindl. Testing for the right ear revealed decibel losses of 10, 20, 25 and 55 respectively. These decibel losses were totaled at 110 and divided by 4 to obtain the average hearing loss at those cycles of 27.5. The average of 27.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 2.5 decibels for the right ear which was multiplied by the established factor 1.5 to compute a 3.75 percent loss of hearing for the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 15, 25 and 65 decibels respectively. These decibel losses were totaled at 120 decibels and divided by 4 to obtain the average hearing loss at those cycles of 30 decibels. The average of 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 5 decibels which was multiplied by the established factor 1.5 to compute a 7.5 percent loss of hearing for the left ear. The right ear loss of 3.75 was then multiplied by 5, added to the left ear loss of 7.5 and then divided by 6 to equal a 4.37 percent binaural loss of hearing. Based upon these calculations, appellant was granted a schedule award for a four percent binaural hearing loss which is compensable under the Act.¹⁰

On appeal, appellant also contends that, he should be entitled to hearing aids, as they were recommended by his physician in connection with his November 12, 1998 audiogram. While the Office medical adviser who reviewed Dr. Jaindl's report and calculated the schedule award declined to authorize hearing aids, this matter is not presently before the Board as the Office has not issued a decision with regard to hearing aids.¹¹

⁸ *Id.*

⁹ *Kenneth E. Leone, supra* note 2.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 1994).

¹¹ *See* 20 C.F.R. § 501.2(c). With respect to reimbursement for medical services and appliances, 5 U.S.C. § 8103(a) states, in pertinent part, that "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." While the Office medical adviser declined to authorize the purchase of hearing aids based on his conclusion that Dr. Jaindl had not recommended hearing aids, a review of Dr. Jaindl's report reveals no discussion of this issue.

The decision of the Office of Workers' Compensation Programs dated July 21, 1999 is hereby affirmed.

Dated, Washington, DC
December 11, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member