

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND T. KLOSOWSKI and DEPARTMENT OF THE AIR FORCE,
DULUTH AIR NATIONAL GUARD BASE, St. Paul, MN

*Docket No. 99-2557; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This is the second appeal in this case.¹ The Board's decision and order dated May 18, 1999 set forth the prior facts and history of this case.² In the decision, the Board reversed the May 16, 1997 decision of the Office, by which the Office found that the evidence of record failed to establish a causal relationship between appellant's employment factors and his hearing loss. The Board found that the Office had failed to meet its burden of proof in rescinding its acceptance of the claim. The Board stated that Dr. Leek to whom appellant was referred for further evaluation, indicated that appellant's hearing loss was at least partially due to workplace noise exposure. Furthermore, subsequent to Dr. Leek's submission, two Office medical advisers reviewed the record and concurred with Dr. Leek that appellant's hearing loss was not ratable for schedule award purposes. One Office medical adviser indicated that workplace exposure did contribute to the nonratable hearing loss and the other was silent on the issue.

¹ See Docket No. 97-2217, issued May 18, 1999.

² On November 22, 1995 appellant, then a 54-year-old air commander, filed a notice of occupational disease and claim for compensation benefits alleging that as a result of his employment he sustained a bilateral hearing loss. On December 21, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for a noise-induced bilateral hearing loss. By letter dated March 1, 1996, the Office notified appellant that his claim was prematurely accepted for hearing loss and that it was sending him to an audiologist for a second opinion evaluation on the cause and extent of his hearing loss. Appellant was referred to Dr. Joseph H. Leek, a Board-certified otolaryngologist, who opined that appellant's hearing loss was at least partially due to noise exposure in his federal employment. By decision dated May 16, 1997, the Office denied appellant's claim finding that the evidence of record was insufficient to establish a causal relationship between appellant's hearing loss and factors of his federal employment. On August 13, 1999 appellant appealed the Office's decision to the Board. By decision dated May 18, 1999, the Board reversed the Office's May 16, 1997 decision and remanded the case.

Upon remand of the case, the Office issued an August 2, 1999 decision accepting appellant's claim for hearing loss due to employment-related noise exposure. The Office, based on the evidence of record, determined that appellant's hearing loss was not severe enough to be considered ratable.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a compensable hearing loss for schedule award purposes.

The schedule award provision of the Federal Employees' Compensation Act³ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then a "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 sounds under everyday conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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 Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

Two district medical advisers applied the Office's standard procedures to the April 23, 1996 audiogram performed for Dr. Leek, a Board-certified otolaryngologist, to whom the Office referred appellant.⁹ The district medical advisers concurred with Dr. Leek's assessment that appellant suffered from a noise-induced, high frequency, neurosensory hearing loss bilaterally.

³ 5 U.S.C. § 8107.

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 324-25 (1961).

⁶ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁸ *Daniel C. Goings*, *supra* note 4.

⁹ The Office had accepted that appellant sustained an employment-related hearing loss in both ears due to noise exposure.

Testing for the right ear at the relevant frequencies revealed decibel losses of 5, 0, 10 and 20 respectively. These decibels were totaled at 35 and were divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 8.75 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 16.25 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.¹⁰ Testing for the left ear at the relevant frequencies revealed decibel losses of 0, 0, 15 and 45 respectively. These decibels were totaled at 60 and were divided by 4 to obtain the average hearing loss at those cycles of 15 decibels. The average of 15 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 10 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.¹¹ Accordingly, pursuant to the Office's standardized procedures, the district medical adviser properly determined that appellant had a nonratable hearing loss in both ears.

By decision dated August 2, 1999, the Office denied appellant's claim for a schedule award on the grounds that appellant's hearing loss was nonratable under the Office's standardized procedures.

The decision of the Office of Workers' Compensation Programs dated August 2, 1999 is hereby affirmed.

Dated, Washington, DC
December 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁰ See A.M.A., *Guides* 224 (4th ed. 1993).

¹¹ *Id.*