

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. GARAY and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Albuquerque, NM

*Docket No. 99-967; Submitted on the Record;
Issued May 15, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for a hearing loss.

On March 6, 1997 appellant, then a 56-year-old special agent, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a permanent hearing loss while in the performance of duty. Appellant stated that he became aware of his hearing loss in 1976 but did not relate it to his employment until 1978. Appellant continued to work until his retirement in January 1998. Also on March 6, 1997 appellant filed a claim for a schedule award.

In an accompanying statement, appellant listed his history of employment, indicating that he had been exposed to excessive noise for a 26-year period beginning in 1972 until 1998. Appellant noted, as a special agent, he was required to attend scheduled firearms training sessions in order to maintain his proficiency. Appellant maintains that during the first 10 years of his tenure with the employing establishment no hearing protection was afforded during the firearms training sessions. Appellant was also a copilot of light aircraft on employing establishment missions until 1993 where he was subjected to additional hazardous noise.

The employing establishment furnished the Office with copies of appellant's job description, employment records, employee medical reports and audiograms performed at the employing establishment. The employing establishment indicated that appellant participated in mandatory firearms training for special agents eight times annually. The employing establishment also noted that, in 1965, the special agents were instructed to use cotton impregnated with petroleum jelly while on the fire line for hearing protection, and in June 1974 the use of ear guards during firearms training was mandatory.

In a statement of accepted facts dated July 10, 1997, the Office noted that appellant's job as a special agent from 1972 until January 1998 required qualification in both handguns and

machine guns, that the decibel level ranged up to 157.72 decibels on an intermittent, but consistent basis throughout his career. Appellant used both earplugs and firing range earmuffs during firearms qualifications.

By letter dated July 17, 1997, the Office referred appellant to Dr. Karl Horn, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Horn with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Horn performed an otologic evaluation of appellant on August 12, 1997 and audiometric testing was conducted on the doctor's behalf on August 12, 1997. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 20, 15, 15 and 45 decibels; left ear 10, 15, 15 and 45 decibels. Dr. Horn determined that appellant sustained bilateral high frequency sensorineural hearing loss involving 3,000 hertz in the speech frequencies bilaterally.

On October 29, 1997 the Office notified appellant that his occupational disease claim has been accepted for binaural hearing loss.

On November 13, 1997 an Office medical adviser reviewed Dr. Horn's report dated September 10, 1997, and the audiometric test of August 12, 1997. Dr. Horn concluded that appellant sustained a sensorineural hearing loss which was caused or made worse by exposure to occupational noise. However, the medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's current standards for evaluating hearing loss to the results of the August 12, 1997 audiology test. Dr. Horn determined that appellant had a zero percent monaural hearing loss in the left ear and zero percent monaural hearing loss in the right ear and no binaural hearing loss. The medical adviser recommended that a hearing aid be authorized. The medical adviser noted reviewing the medical record and concluded that the August 12, 1997 audiogram was used for adjudication as it met all Office standards and was part of Dr. Horn's evaluation.

By decision dated January 26, 1998, the Office determined that the hearing loss was not severe enough to be considered ratable for purposes of a schedule award.

The Board finds that the Office properly denied appellant's claim for a schedule award for a hearing loss.

Section 8107(c) of the Federal Employees' Compensation Act¹ specifies 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 of loss of a member, function or organ shall be determined. The method used in making such a 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

¹ 5 U.S.C. §§ 8101-8193, § 8107(c).

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation Permanent Impairment*, 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 and 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. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.⁴ The Board has concurred in the Office’s adoption of this standard for evaluation hearing loss for schedule award purposes.⁵ In addition, the Federal (FECA) Procedure Manual requires that all claims for hearing loss due to its acoustic trauma, requires an opinion from a Board-certified specialist in otolaryngology.⁶ The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA), or state licensure as an audiologist.⁷

An Office medical adviser applied the Office’s standardized procedures to the August 12, 1997 audiogram performed for Dr. Horn. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz revealed decibels losses of 20, 15, 15 and 45 respectively. These decibels were totaled at 95 and were divided by 4 to obtain an average hearing loss at those cycles of 23.75 decibels. The average of 23.75 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 decibels losses of 10, 15, 15 and 45 respectively. These decibels were totaled at 85 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 hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Horn’s September 10, 1997 report and the accompanying August 12, 1997 audiogram performed on his behalf. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above.⁸ The Board further notes that the medical

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

⁴ P. 166 (4th ed. 1994).

⁵ See *Goings*, *supra* note 2.

⁶ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

⁷ Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

⁸ This decision does not affect appellant’s entitlement to medical benefits for the accepted employment injury.

adviser properly selected the August 12, 1997 audiogram obtained by Dr. Horn by noting that it was part of Dr. Horn's evaluation and that it met all of the Office's standards.⁹

The January 26, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 15, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ While the record contains a September 23, 1996 audiogram taken for an employing establishment physician, there is insufficient information accompanying such audiogram to demonstrate that it meets the Office's standards for audiograms used in the evaluation of permanent impairment of hearing; *see Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); *see also* Federal (FECA) Procedure Manual 3.600 ex. 4 (December 1994).