U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD J. BERENS and DEPARTMENT OF JUSTICE,
U.S. MARSHALLS SERVICE, Los Angeles, CA

Docket No. 98-2292; Submitted on the Record;
Issued September 18, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he has a compensable hearing loss of his right ear causally related to factors of his federal employment.

This case was previously on appeal before the Board.[1] The relevant facts are set forth in the July 28, 1997 decision. The Board remanded the case for the Office of Workers' Compensation Programs to further develop whether appellant sustained a sensorineural hearing loss of the right ear attributable to industrial noise exposure.

On remand the Office referred appellant to Dr. Eugene Taw, a Board-certified otolaryngologist, together with a statement of accepted facts and the case record, for a second opinion examination. In a September 24, 1997 report, Dr. Taw stated that he saw appellant that day. He reviewed appellant's medical history and noise exposure in his federal employment. Dr. Taw stated that a hearing test was performed that day, noting as follows:

> "The test revealed a high frequency sensorineural hearing loss in the left ear. The right ear showed a conductive mixed-type of hearing loss with an average hearing loss of 40dB. There was also a sensorineural hearing loss in the right ear. A tympanogram was performed which showed a type A tympanogram. Reliability of the test was rated good."
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> "The conductive component in the right ear could be attributed to possible otosclerosis. However, the patient did show a high frequency sensorineural hearing loss in both ears more severe on the right than the left, as judged from the bone conduction pressure. The conductive component could have possibly protected his right ear from acoustic trauma but he did show evidence of an

[1] 95-2075.

acoustic trauma in his right ear and it appeared to be more severe than the left. If the conductive component of his hearing was not there, he would have suffered much more of an acoustic trauma in his right ear. The sensorineural hearing loss in both ears could be partially caused by otosclerosis as well as acoustic trauma."

Dr. Taw found that testing for the right ear at the relevant frequencies revealed decibel losses of 30, 40, 55 and 55 respectively. These decibels were totaled at 180 and were divided by 4 to obtain the average hearing loss at those cycles of 45 decibels. The average of 45 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 20 which was multiplied by the established factor of 1.5 to compute a 30 percent loss of hearing for the right ear.[2]

By decision dated December 2, 1997, the Office denied appellant's claim for a work-related hearing loss in the right ear.[3]

The Board finds that medical evidence is sufficient to establish that appellant sustained a compensable loss of hearing in his right ear causally related to factors of his federal employment. The report of Dr. Taw attributed appellant's hearing loss, in part, to acoustic trauma encountered is his federal employment.[4]

The schedule award provision of the Act[5] 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.[6] 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.[7]

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

[2] *See* A.M.A., *Guides* 224 (4th ed. 1993).

[3] The Office referred Dr. Taw's report to the same District medical adviser who had previously reviewed other reports in this case, which also attributed appellant's right ear hearing loss to noise exposure at work. The District medical adviser stated that in his opinion appellant's hearing loss in the right ear was totally attributable to otosclerosis.

[4] The Board has held that if a work factor contributes in any way to the employee's condition such condition would be considered employment related for the purpose of compensation benefits under the Federal Employees' Compensation Act. It is not necessary to prove a significant contribution of a factor of employment to a condition for the purpose of establishing causal relationship. *Rudy C. Sixta, Jr.*, 44 ECAB 727 (1993); *Arnold Gustafson*, 41 ECAB 131 (1989).

[5] 5 U.S.C. § 8107.

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

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

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.[8] 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.[9] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[10]

The Board finds that when applying the Office's standard procedures to the September 24, 1997 audiogram performed for Dr. Taw's testing for the right ear at the relevant frequencies revealed decibel losses of 30, 40, 55 and 55 respectively. These decibels were totaled at 180 and were divided by 4 to obtain the average hearing loss at those cycles of 45 decibels. The average of 45 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 20 which was multiplied by the established factor of 1.5 to compute a 30 percent loss of hearing for the right ear.[11]

The decision of the Office of Workers' Compensation Programs dated December 2, 1997 is reversed and is remanded for payment of an appropriate schedule award.

Dated, Washington, DC
September 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[8] 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.

[9] FECA Program Memorandum No. 272 (issued February 24, 1986).

[10] *Danniel C. Goings*, *supra* note 6.

[11] *See* A.M.A., *Guides* 224 (4th ed. 1993).