

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARVIN ATKINS, SR. and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY INSPECTION SERVICE, Louisville, KY

*Docket No. 99-1756; Submitted on the Record;  
Issued April 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant had no more than a 33 percent binaural hearing loss for which he received a schedule award.

On May 19, 1997 appellant, then a 60-year-old food inspector, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained permanent hearing loss while in the performance of duty.

Accompanying appellant's claim he submitted an audiology report dated February 7, 1997. The report indicated appellant sustained mild to severe high frequency sensory hearing loss consistent with appellant's history of noise exposure.

The employing establishment furnished the Office with copies of appellant's job description, employment records and employee medical reports. Appellant also submitted information regarding his noise exposure history.

By letter dated October 29, 1997, the Office referred appellant to Dr. Andrew S. Mickler, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The Office provided Dr. Mickler with a CA-1332 to be prepared upon examination.

Dr. Mickler performed an otological evaluation of appellant on December 17, 1997 and audiometric testing was conducted on the doctor's behalf on November 12, 1997. He diagnosed appellant with sensorineural hearing loss; however, he was unable to determine whether the hearing loss was due in part to the noise exposure encountered in appellant's federal employment.

The Office subsequently obtained additional audiological records and referred these to an Office medical adviser. In a January 21, 1997 report, the medical adviser determined that appellant did experience exposure to hazardous noise during his tenure with the federal

government. He determined that the results of the November 12, 1997 audiogram were consistent with noise induced hearing loss due in part by noise exposure during appellant's federal employment.

The medical adviser evaluated the audiogram performed on behalf of Dr. Meckler on November 12, 1997 and testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 45, 40, 40 and 70 decibels; left ear 45, 25, 35 and 80 decibels. The medical adviser determined that appellant sustained employment-related bilateral sensorineural hearing loss and granted a schedule award of 33 percent.

In a February 8, 1999 decision, the Office notified appellant that his occupational disease claim had been accepted for binaural hearing loss. The Office determined that appellant sustained a 33 percent binaural loss of hearing for the period of November 12, 1997 to February 16, 1999. The Office indicated a pay rate of 66 2/3 percent of appellant's weekly compensation.<sup>1</sup>

The Board finds that appellant has no more than a 33 percent work-related binaural hearing loss, for which he received a schedule award.

Section 8107(c) of the Federal Employees Compensation Act<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cps. 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

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<sup>1</sup> In a letter dated February 8, 1999, the Office notified appellant that there was a discrepancy between the CA-7 form and the CA-2 forms he prepared. The Office indicated that appellant did not claim dependents on the CA-7 form completed April 8, 1998; however, on the CA-2, appellant indicated he had a wife. On appeal, appellant indicated that he did have a wife and was therefore entitled to augmented compensation for the period of November 12, 1997 to February 16, 1999. The evidence regarding appellant's dependent wife and the adjustment to the schedule award as a result thereof was not before the Office at the time of the February 8, 1999 decision. However, this does not prevent appellant from presenting this evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b); *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193, § 8107(c)

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>4</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

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.<sup>5</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.<sup>6</sup> In addition, the federal procedure manual requires that all claims for hearing loss due to its acoustic trauma, requires an opinion from a Board-certified specialist in otolaryngology.<sup>7</sup> 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.<sup>8</sup>

An Office medical adviser applied the Office's standardized procedures to the November 12, 1997 audiogram performed for Dr. Mickler. Testing for the right ear at the frequency levels of 500, 1,000 and 3,000 cps revealed decibels losses of 45, 40, 40 and 70 respectively. These decibels were totaled at 195 and were divided by 4 to obtain an average hearing loss at those cycles of 48.75 decibels. The average of 48.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 23.75 which was multiplied by the established factor of 1.5 to compute 35.63 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 cps revealed decibels losses of 45, 25, 35 and 80 respectively. These decibels were totaled at 185 and were divided by 4 to obtain the average hearing loss at those cycles of 46.25 decibels. The average of 46.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 21.25 which was multiplied by the established factor of 1.5 to compute a 31.88 percent hearing loss for the left ear. The amount of the better ear, 31.88, is multiplied by 5 and added to the amount from the worse ear, 35.63. The entire amount is divided by 6 to arrive at a 33 percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Mickler's December 17, 1997 report and the accompanying audiogram performed on his behalf. The result is a 33 percent bilateral sensorineural hearing loss as set forth above.<sup>9</sup>

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<sup>5</sup> Page 166 (4<sup>th</sup> ed. 1994).

<sup>6</sup> See *Danniel C. Goings*, *supra* note 3.

<sup>7</sup> Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

<sup>8</sup> Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

<sup>9</sup> Other audiograms of record are not a proper basis for calculating a schedule award as they have not been certified as accurate by a physician, *see Joshua A. Holmes*, 42 ECAB 231 (1990).

The February 8, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 18, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member