

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. PERRODIN and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 00-2730; Submitted on the Record;
Issued August 20, 2001*

DECISION and ORDER

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

The issue is whether appellant has more than an eight percent hearing loss of his left ear for which he was granted a schedule award.

On October 19, 1998 appellant, then a 56-year-old material examiner and identifier, filed a notice of occupational disease (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. On March 24, 1999 the Office of Workers' Compensation Programs accepted the claim for hearing loss.

By letter dated April 6, 1999, the Office referred appellant to Dr. Richard B. Dawson, Board-certified in otolaryngology, for otologic evaluation and audiologic testing. The Office provided Dr. Dawson with a statement of accepted facts and copies of all medical reports.

Dr. Dawson performed an otologic evaluation of appellant on April 29, 1999 and audiometric testing was conducted on his behalf the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 5, 10, 25 and 40 decibels; left ear 15, 15, 45 and 45 decibels. In his May 6, 1999 report, Dr. Dawson stated that the auditory assessment revealed a bilateral high tone sensorineural hearing loss. Quantitation of hearing impairment according to the National Institute of Occupational Safety and Health (NIOSH) guideline showed 0 percent monaural loss in the right and 15 percent monaural loss in the left for an NIOSH binaural impairment of 2.5 percent. He noted that the audiologist has recommended bilateral in-the-ear hearing aids. Dr. Dawson stated that appellant has worked with diesel forklifts over 12 years during his federal employment and he has had a deteriorating situation with his hearing. Dr. Dawson stated that appellant showed a sensorineural hearing loss that was in excess of what would normally be predicted on the basis of presbycusis. Dr. Dawson noted that noise level measurements were not in the record and the Statement of Accepted Facts did not list the maximum decibel level that appellant was exposed to. Review of the records further revealed a number of medical problems appellant had including high blood pressure, and a so-called stroke happening about December 1991. Review of the medical

records revealed that it was evident at this time that appellant had a significant threshold shift. It was further noted that appellant was on a significant number of medications at the present time. Dr. Dawson stated that it was difficult to predict exactly what was going on as he did not have noise levels to be able to correlate this with the hearing loss. He further stated that there were other possibilities, which he discussed within the body of the report, regarding why appellant's hearing level might have gone down. Dr. Dawson stated that he was reluctant to just assume that appellant had this kind of hearing loss from the forklifts, but without any noise surveys to show that the levels were not high enough to cause this, then the presumption was that this may have been caused by the noise.

On May 5, 2000 the Office again notified appellant that his claim had been accepted for binaural hearing loss.

On May 15, 2000 appellant filed a claim for a schedule award.

On June 4, 2000 an Office medical adviser reviewed Dr. Dawson's report and audiometric test results and concluded that appellant had an employment-related sensorineural monaural hearing loss in the left ear. After applying the Office's current standards for evaluating hearing loss to the results of the April 29, 1999 audiologic tests, the Office medical adviser determined that appellant had a 7.5 percent monaural loss in the left ear and a 0 percent monaural hearing loss in the right ear. Hearing aids were authorized.

On July 13, 2000 the Office granted appellant a schedule award for an eight percent loss of hearing in the left ear. The period of the award ran for 4.16 weeks from April 29 to May 28, 1999.

The Board finds that appellant has no more than an eight percent monaural left ear 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 Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.² 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.³ 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."⁴

¹ 5 U.S.C. § 8107.

² *Id.* at § 8107(c)(19).

³ *Andrew Arron, Jr.*, 48 ECAB 141 (1996).

⁴ *Id.*

The Office has adopted by regulations the standards for evaluating industrial hearing loss contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵ 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.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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 Office medical adviser applied the Office’s standardized procedures to the April 29, 1999 audiogram performed for Dr. Dawson. Testing for the left ear revealed decibel losses of 15, 15, 45 and 45 respectively. These decibel losses were totaled at 120 and divided by 4 to obtain the average hearing loss at those cycles of 30. The average of 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 5 decibels for the left ear. The 5 was multiplied by 1.5 resulting in a 7.5 loss. The 7.5 loss was properly rounded up to an 8 percent monaural (left ear) loss.¹⁰ Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 10, 25 and 40 respectively. These decibel losses were totaled at 80 decibels and divided by 4 to obtain the average hearing loss at those cycles of 20 decibels. The average of 20 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear.¹¹ Accordingly, pursuant to the A.M.A., *Guides* standardized procedures, the Office medical adviser determined that appellant had an eight percent monaural loss of hearing in his left ear and a nonratable loss of hearing in his right ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Dawson’s May 6, 1999 report and the accompanying April 29, 1999 audiometric evaluation that Dr. Dawson reviewed. This resulted in a calculation of an eight percent monaural hearing loss in the left ear. The right ear was not ratable under these standards and, therefore, not compensable.

⁵ 20 C.F.R. § 10.404, effective February 1, 1999.

⁶ A.M.A., *Guides* 224 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 5 U.S.C. § 8107.

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

On appeal, appellant contends that the Office incorrectly awarded him a schedule award of eight percent for his left ear. As noted, the percentage of appellant's monaural hearing loss was properly calculated.

Appellant also contends that as his hearing loss has been getting progressively worse since 1990, the length of time he has been having hearing problems, plus his future hearing problems, should be considered. Appellant noted that he was only compensated for 4.16 weeks of compensation from April 29 to May 28, 1999. The Board notes that the period of the award, April 29 to May 28, 1999, represents the number of weeks compensation which was paid in proportion to the percentage loss of use for permanent loss of appellant's hearing. In this case, an 8 percent hearing loss results in 4.16 weeks of compensation. If at some later date a medical examination indicates that appellant's condition has worsened, a claim for an additional schedule award can be made to cover any additional employment-related impairment.¹²

The decision of the Office of Workers' Compensation Programs dated July 13, 2000 is affirmed.

Dated, Washington, DC
August 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹² *Michael C. Norman*, 42 ECAB 768 (1991).