

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELISEO G. GUZMAN and DEPARTMENT OF THE AIR FORCE,
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, TX

*Docket No. 00-337; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 19 percent hearing loss causally related to his federal employment.

On September 1, 1999 appellant, then a 57-year-old pneudraulic systems mechanic/jet engine accessories tester/overhaul mechanic, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a hearing loss in the course of his federal employment. He stated that he first became aware of his illness on January 10, 1989. On the reverse of the form, the employing establishment indicated that appellant was last exposed to these work conditions on January 28, 1992, when he retired. Medical and factual records included in the record included test results from periodic audiograms performed by the employing establishment between January 12, 1981 and January 28, 1992, and documents indicating appellant was exposed to loud noise at work.

By letter dated September 14, 1998, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts to Dr. Diana H. Henderson, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Henderson performed otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf on September 23, 1998. However, she did not fully respond to the Office's questions regarding appellant's hearing loss and the audiogram performed for her did not include readings at the 3,000 hertz (Hz) level.

By letter dated October 27, 1998, the Office subsequently referred appellant, the case record and a statement of accepted facts to Dr. Wesley W.O. Kreuger, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

In an October 28, 1998 letter, the employing establishment forwarded to the Office an October 19, 1998 audiogram.

Dr. Kreuger performed otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf on December 9, 1998.¹ Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear -- 30, 35, 35 and 50 decibels; left ear -- 30, 35, 40 and 50 decibels. The audiogram results noted a calibration date of August 7, 1998.

In his report, Dr. Kreuger noted that appellant had evidence of a moderate, bilateral, sensorineural hearing loss. Dr. Kreuger recommended speech strategy techniques to help appellant with his communication skills, and also noted that appellant would benefit from binaural amplification.

The Office accepted the claim for bilateral sensorineural hearing loss.

In a report dated February 10, 1999, an Office medical adviser reviewed the medical evidence of record. Applying the Office's standardized guidelines to the December 9, 1998 findings, the Office medical adviser determined that appellant had a 19 percent binaural hearing loss. Thereafter, appellant forwarded a claim for a schedule award.

In a February 16, 1999 decision, the Office issued a schedule award for a 19 percent binaural hearing loss.

By letter dated March 30, 1999, appellant requested a review of the written record. In support of his request, he stated that the payment of \$17,237.56 was insufficient compensation for his 19 percent binaural hearing loss.

By decision dated August 10, 1999, a hearing representative affirmed the Office's March 23, 1999 decision.² The Office found that appellant had no more than a 19 percent binaural hearing loss and that the Office properly calculated the amount of appellant's entitlement.

The Board finds that appellant sustained no more than a 19 percent binaural hearing loss for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use, of a specified member of the body.³ 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 determination is a matter which rests in the sound discretion of the Office.⁴ For consistent results and to ensure

¹ The date on the audiological examination states that it was given on October 9, 1998. This appears to be a typographical error.

² The Office modified the March 23, 1999 decision to note a correction regarding the date appellant's award should have started, from October 29, 1998, as stated in the original decision, to December 9, 1998.

³ 5 U.S.C. § 8107.

⁴ See *Arthur E. Anderson*, 43 ECAB 691 (1992).

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 a uniform standard applicable to all claimants.⁵ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office,⁶ and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

Under the A.M.A., *Guides*,⁸ a hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a “fence” of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds in everyday listening conditions.⁹ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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.¹⁰

In the instant case, the record supports that the Office awarded the correct amount of compensation under the Act. Dr. Kreuger, the otolaryngologist to whom the Office referred appellant for a current otologic evaluation and for audiometric testing, reported that audiometric testing of December 9, 1998 revealed a bilateral sensorineural hearing loss sustained by appellant. The Office medical adviser reviewed Dr. Kreuger’s report and audiogram performed on his behalf, and properly applied the Office’s standardized procedures to the December 9, 1998 audiogram. The Office medical adviser applied the standardized procedures to the audiogram as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second at frequencies 30, 35, 35 and 50 decibels, respectively, were totaled at 150 and divided by 4 to obtain the average hearing loss at those frequencies of 37.5. The average of 37.5 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 12.5, which was multiplied by 1.5 to arrive at an 18.8 percent loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 30, 35, 40 and 50 decibels, respectively, for a total of 155 decibels. These losses were divided by 4 for an average hearing loss of 38.75 decibels. The average was reduced by 25 decibels (as explained above) to equal 13.75 decibels, which was multiplied by 1.5 to arrive at a 20.6 percent loss for the left ear. The 18.8 percent loss for the right ear was then multiplied by 5 and added to the 20.6 percent loss of the left ear. The resulting sum was then divided by six for a binaural loss of 19 percent. The Office properly used Dr. Kreuger’s audiogram and properly applied the Office formula to calculate that appellant had a 19 percent binaural hearing loss.

⁵ See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁷ *Danniel C. Goings*, 37 ECAB 781 (1986).

⁸ A.M.A., *Guides* (4th ed. 1993).

⁹ *Id.* at 224.

¹⁰ *Id.*; see also *Danniel C. Goings*, *supra* note 7.

The Act's compensation schedule specifies a maximum of 200 weeks of compensation payable for the total, or 100 percent, loss of hearing in both ears, and the schedule compensates partial loss of hearing at a proportionate rate.¹¹ Accordingly, the amount payable for a 19 percent binaural loss would be 19 percent of 200 weeks, or 38 weeks of compensation, which the Office awarded appellant in its March 23, 1999 schedule award decision. There is no other audiogram of record conforming with the Office's established standard for rating permanent hearing impairment which supports a greater amount of hearing loss.¹²

Accordingly, the Board finds that the Office properly followed its standardized procedures in evaluating appellant's permanent loss of hearing at 19 percent binaurally, and that the Office correctly applied schedule award compensation provisions in awarding appellant a total of 38 weeks of compensation.

The decision of the Office of Workers' Compensation Programs dated August 10, 1999 is affirmed.

Dated, Washington, DC
January 19, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹¹ 5 U.S.C. § 8107(c)(13)(b).

¹² As noted in the text of this decision, the September 23, 1998 audiogram performed for Dr. Henderson cannot be the basis for making a schedule award determination as it did not contain required testing at the 3,000 Hz frequency level. Likewise, it is not clear if the October 19, 1998 audiogram was reviewed by a physician and in any event, that audiogram revealed a lesser degree of hearing loss than the audiogram performed for Dr. Kreuger. See *Joshua A. Holmes*, 42 ECAB 231 (1990).