

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD BEAMISH and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Atlanta, GA

*Docket No. 00-930; Submitted on the Record;
Issued January 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has a ratable monaural hearing loss of his left ear.

On December 7, 1998 the Office of Workers' Compensation Programs received a notice of occupational disease and claim for compensation (Form CA-2) from appellant, then a 38-year-old special agent. Appellant claimed the hearing loss in his left ear was caused by noise exposure in the course of his federal employment as a firearm instructor, a position he held since March 1993.

In support of his claim, appellant submitted a medical report dated August 27, 1998 from Dr. Scott Henderson, Board-certified in occupational medicine, which diagnosed a very mild high frequency hearing loss in the left ear. He also submitted an audiogram dated October 22, 1998 from Georgia Baptist Health Care System,¹ an audiogram from the office of Dr. Wiley A. Parker, a Board-certified otolaryngologist,² and a report dated November 10, 1998 from Dr. Scott Shulman, a Board-certified internist. The report by Dr. Shulman also diagnosed appellant with mild sensorineural hearing loss in the left ear.

By letter dated February 17, 1999, the Office determined that a second opinion evaluation was needed to determine whether appellant's hearing loss claim was compensable under the Federal Employees' Compensation Act.

On March 5, 1999 an otologic evaluation was performed by audiologist Christi Wiltse and signed by Dr. Jeffrey A. Kunkes, a Board-certified otolaryngologist, finding a "mild conductive loss at 3000 Hz [hertz] in the left ear." In a letter dated March 9, 1999, Dr. Kunkes stated: "My impression is that [appellant] has a mild left-sided asymmetric sensorineural

¹ The doctor's signature is illegible.

² It is not clear whether the signature is Dr. Parker's or someone else's.

hearing loss on the left in the high frequencies probably due to noise exposure from shooting the gun.”

In response to Dr. Kunkes’ evaluation on March 17, 1999, the district medical adviser reviewed the March 5, 1999 audiogram and provided a medical opinion finding a zero percent hearing loss in appellant’s left ear. The district medical adviser did find that appellant had a mild nonratable hearing loss of the left ear, causally related to his federal employment.

By decision dated March 18, 1999, the Office did accept appellant’s claim, yet found that it was not severe enough to be considered ratable. The Office also found that the medical evidence established that appellant would not benefit from hearing aids.

The Board finds that appellant has no ratable monaural hearing loss of his left ear.

The Act schedule award provisions set forth the number of weeks of compensation to be paid for the permanent loss of use of the members of the body that are listed in the schedule.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 a determination is a matter which rests in the sound discretion of the Office.⁴ However, as a matter of administrative practice, the Board 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.”⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁶ 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.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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

³ 5 U.S.C. § 8107.

⁴ *Richard Larry Enders*, 48 ECAB 184 (1996).

⁵ *Id.*

⁶ *Id.*

⁷ A.M.A., *Guides* 174-75 (3d ed. rev., 1990).

⁸ *Id.*

⁹ *Id.*

binaural hearing loss.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

The Office medical adviser applied the Office's standardized procedures to the March 5, 1999 audiogram performed by Dr. Kunkes. Testing for the left ear revealed decibel losses of 5, 5, 10 and 30 respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss to those cycles of 12.5. The average of 12.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a nonratable loss of hearing in his left ear. The Board notes that none of the other audiograms of record substantiate that appellant has a ratable hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Kunkes' March 5, 1999 report. Since the left ear was not ratable under these standards, it was, therefore, not compensable.

The Board notes that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, "other benefits will still be payable if any causally related hearing loss exists" such as a hearing aid¹² and that appellant is entitled to medical benefits. Dr. Kunkes did recommend retesting in six months. There is no medical evidence of record that he requires a hearing aid.

The decision of the Office of Workers' Compensation Programs dated March 18, 1999 is hereby affirmed.

Dated, Washington, DC
January 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski

¹⁰ *Id.*

¹¹ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

¹² *Raymond H. Vannett*, 44 ECAB 480 (1993).

Alternate Member