

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD D. HATTENDORF and DEPARTMENT OF THE NAVY,
PUBLIC WORKS CENTER, Great Lakes, IL

*Docket No. 01-778; Submitted on the Record;
Issued November 7, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's employment-related hearing loss is ratable, entitling him to a schedule award.

On October 26, 1999 appellant, then a 59-year-old painter, filed an occupational claim for hearing loss.

The Office of Workers' Compensation Programs referred appellant, together with the case record and a statement of accepted facts, to Dr. Jack D. Clemis, an otolaryngologist, for evaluation. On May 22, 2000 audiometric testing of the right ear at 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed losses of 5, 20, 30 and 35 decibels respectively. Testing the left ear at the same frequencies revealed losses of 5, 20, 20 and 30 decibels respectively.

In a decision dated September 26, 2000, the Office accepted appellant's claim for bilateral noise-induced hearing loss. On September 29, 2000 appellant filed a claim for a schedule award.

On October 16, 2000 an Office medical adviser reviewed the audiometric testing obtained for Dr. Clemis on May 22, 2000. The medical adviser determined that appellant had no ratable hearing impairment.

In a decision dated November 28, 2000, the Office found that appellant's hearing loss was not severe enough to be considered ratable. The Office denied appellant's claim for a schedule award.

The Board finds that the evidence fails to establish that appellant's employment-related hearing loss is ratable.

The Federal Employees' Compensation Act¹ provides compensation for disability and for physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.² In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment, however, the Act compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.³

The Act's compensation schedule⁴ specifies the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, 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 that rests in the sound discretion of the Office.⁵ 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.⁶

The Office evaluates hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*, using hearing levels recorded at frequencies 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 because, as the A.M.A., *Guides* points out, when the average decibel loss is 25 decibels or less, no impairment is considered to exist in the ability to hear everyday sounds under everyday listening conditions.⁷ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁸ The binaural hearing 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 binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for schedule compensation purposes.¹⁰

¹ 5 U.S.C. §§ 8101-8193.

² *E.g.*, *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

³ *See Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986).

⁴ 5 U.S.C. § 8107.

⁵ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁶ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁷ American Medical Association, *Guides to the Evaluation of Permanent Impairment* 224 (4th ed. 1995).

⁸ *Id.*

⁹ *See also* FECA Program Memorandum No. 272 (issued February 24, 1986).

¹⁰ *Danniel C. Goings*, *supra* note 5.

The Office medical adviser applied the Office's standardized procedures to the May 22, 2000 audiogram obtained for Dr. Clemis. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 5, 20, 30 and 35 decibels respectively. These losses were totaled at 90 decibels and divided by four to arrive at an average hearing loss of 22.5 decibels. Because the average hearing loss was less than 25 decibels, no impairment is considered to exist according to the A.M.A., *Guides*, in the ability to hear everyday sounds under everyday listening conditions. Appellant's hearing loss in the right ear is, therefore, zero percent.

Testing for the left ear at frequencies of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 5, 20, 20 and 30 decibels respectively. These losses were totaled at 75 decibels and divided by four to arrive at an average hearing loss of 18.75 decibels, again below the impairment threshold of 25 decibels. Appellant's hearing loss in the left is also zero percent.

On appeal appellant notes a seeming contradiction between the acceptance of his claim for medical benefits and the finding that his hearing loss is nonratable. While it is true that the Office has accepted appellant's claim for an employment-related bilateral noise-induced hearing loss, the most recent audiometric testing shows that the loss is not severe enough to impair the ability to hear everyday sound under everyday listening conditions, according to the A.M.A., *Guides*. With no such impairment demonstrated under the A.M.A., *Guides*, appellant's hearing loss does not entitle him to a schedule award for permanent impairment. Appellant may nonetheless be entitled to medical benefits for his employment-related condition.

The Office correctly followed standardized procedures in evaluating appellant's hearing loss and correctly denied a schedule award on the grounds that appellant's hearing loss was not severe enough to entitle appellant to a schedule award.

The November 28, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 7, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member