

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DON F. POTESIO and DEPARTMENT OF THE NAVY,
PUBLIC WORKS CENTER, Oakland, Calif.

*Docket No. 96-1370; Submitted on the Record;
Issued March 18, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant met his burden of proof to establish that he has a ratable employment-related hearing loss; and (2) whether appellant is entitled to hearing aids and an audio link hearing device in connection with an employment-related hearing loss.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he has a ratable employment-related hearing loss.

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 members of the body that are listed in the schedule.¹ 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 of Workers' Compensation Programs.² 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."³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

⁴ *George L. Cooper*, 40 ECAB 296, 302 (1988).

each frequency are added up and averaged.⁵ 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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

In the present case, the Office accepted that appellant sustained an employment-related binaural hearing loss. By decision dated July 21, 1995, the Office denied appellant’s claim that he had a ratable hearing loss. By decision dated February 13, 1996, the Office affirmed its July 21, 1995 decision and further found that appellant was not entitled to hearing aids or an audio link hearing device.

On June 15, 1995 the Office medical adviser reviewed the otologic and audiologic testing performed on April 28, 1995 by Dr. H. Roger Netzer, a Board-certified otolaryngologist to whom the Office referred appellant and applied the Office’s standardized procedures to this evaluation.¹⁰ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 15 and 30 respectively. These decibel losses were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss of 13.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 10, 15 and 30 respectively. These decibel losses were totaled at 60 decibels and were divided by 4 to obtain the average hearing loss of 15 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

The Board has carefully reviewed the medical evidence and notes that it shows that appellant has a nonratable hearing loss under the appropriate standards of the Act. Appellant challenged the use of the standards of the A.M.A., *Guides* in evaluating hearing loss but he did not adequately explain the basis for this argument. Appellant also contends that he should be compensated for his tinnitus. However, appellant has not submitted medical evidence establishing that he has employment-related tinnitus, including a finding that such a condition

⁵ A.M.A., *Guides*, 223-25 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Donald A. Larson, 41 ECAB 947, 951 (1990).

¹⁰ The Office accepted appellant’s claim based for binaural hearing loss based on Dr. Netzer’s report.

has caused or contributed to a permanent and ratable hearing loss. Nor has appellant shown that employment-related tinnitus caused him to incur medical expenses or to experience a loss in wage-earning capacity.¹¹ The A.M.A., *Guides* provides for a schedule award in certain circumstances where tinnitus causes disturbances of vestibular function, but appellant has not filed such a claim and the medical evidence does not show that appellant has disturbances of vestibular function.¹²

The Board further finds that appellant is not entitled to hearing aids and an audio link hearing device in connection with an employment-related hearing loss.

Section 8103(a) of the Act states in pertinent part: “The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”¹³ In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.¹⁴ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁵

The record does not contain medical evidence establishing that appellant is entitled to hearing aids or an audio link hearing device. In his May 24, 1995 report, Dr. Netzer stated that appellant did not want hearing aids at the time and noted that he would be a difficult fit for hearing aids; Dr. Netzer indicated that appellant might be a candidate for an audio link hearing device in the future, but he did not provide a clear opinion that such a device was medically necessary. Appellant submitted a January 18, 1996 letter in which an audiologist stated that an audio link (infra red) hearing device was recommended. However, as causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician, such as an audiologist, cannot be considered by the Board in adjudicating whether appellant is entitled to hearing devices.¹⁶ Appellant also requested annual hearing examinations and a “change in physicians” to further evaluate his hearing condition, but he did not submit sufficient medical evidence to establish the need for such medical evaluation or treatment.

¹¹ See *Larson*, *supra* note 9 at 953-55; *Charles H. Potter*, 39 ECAB 645, 648-49 (1988).

¹² See *Potter* at 648; A.M.A., *Guides* 146, 224 (4th ed. 1993).

¹³ 5 U.S.C. § 8103.

¹⁴ *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹⁵ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹⁶ *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

The decisions of the Office of Workers' Compensation Programs dated February 13, 1996 and July 21, 1995 are affirmed.

Dated, Washington, D.C.
March 18, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member