

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM P. GREEN and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, FL

*Docket No. 98-953; Submitted on the Record;
Issued December 21, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable hearing loss causally related to factors of his employment.

On December 8, 1994 appellant, then a retired 57-year-old aircraft examiner, filed an occupational disease claim alleging that he sustained a hearing loss which he attributed to exposure to aircraft noise during his federal employment.

In a report dated April 21, 1996, Dr. Richard Wagner, a Board-certified otolaryngologist and Office of Workers' Compensation Programs referral physician, stated that appellant underwent a complete otologic and audiologic evaluation and testing on April 17, 1996. He noted that appellant attributed his hearing condition to loud noise exposure while working from 1978 to 1993 as an aircraft examiner. Dr. Wagner provided audiometric test results and stated his opinion that appellant's hearing loss was due to his noise exposure at work. The audiometric test findings revealed that appellant had decibel losses of 5, 10, 25 and 55 upon testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively, and decibel losses of 5, 5, 20 and 30 upon testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively.

On June 19, 1996 Dr. Anderson, an Office medical adviser, calculated appellant's hearing loss using the audiometric test results obtained for Dr. Wagner and the Office's standardized procedures and determined that appellant had a zero percent hearing loss.

By decision dated June 21, 1996, the Office accepted appellant's claim for an employment-related hearing loss but stated that, based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and Office procedures, appellant's hearing loss was not severe enough to be considered ratable and he was therefore not entitled a schedule award for compensation benefits under the Federal Employees' Compensation Act.

By letter dated July 1, 1996, appellant requested an oral hearing before an Office hearing representative.

In a report dated August 5, 1997, Dr. Robert O. Harris, a sociologist, provided audiometric test results obtained on that date.

On August 7, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated October 16, 1997, the Office hearing representative affirmed the Office's June 21, 1996 decision on the grounds that the weight of the medical evidence, as represented by the report of Dr. Wagner, established that appellant did not have a ratable hearing loss under the Act.¹

The Board finds that appellant did not sustain a ratable hearing loss causally related to factors of his employment.

The 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.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 insure 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

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.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. 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. The remaining amount is multiplied by a factor of 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

¹ Subsequent to issuance of the Office's October 16, 1997 decision, appellant submitted additional material. The Board has no jurisdiction to review this material for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973).

⁵ *George L. Cooper*, 40 ECAB 296, 302 (1988).

six to arrive at the amount of the binaural hearing loss. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁶

On June 19, 1996 the Office medical adviser reviewed the otologic and audiologic testing obtained by Dr. Wagner on April 17, 1996 and applied the Office's standardized procedures to this evaluation. 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, 10, 25 and 55 respectively. These decibel losses were totaled at 95 decibels and were divided by 4 to obtain the average hearing loss of 23.75 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 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, 5, 20 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 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. Thus, although the report of Dr. Wagner supports that appellant had an employment-related hearing loss, the audiometric test results demonstrate that the hearing loss is not ratable for schedule award purposes.

Appellant submitted a report from a sociologist who performed audiometric testing on August 5, 1997 and provided an opinion as to the degree of appellant's hearing loss. However, an audiogram must be certified as being accurate by a physician before it can be used to determine the percentage of hearing loss. The Office is not required to review an audiogram which has not been certified by a physician.⁷ Even if the audiogram had been certified by a physician, there would need to be a rationalized medical opinion from the physician explaining how any worsening of appellant's hearing loss between 1996 and 1997 was causally related to his federal employment.

⁶ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

⁷ *See Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

The October 16, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 21, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member