

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY R. GIPSON and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, DC

*Docket No. 98-848; Submitted on the Record;
Issued October 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he is entitled to a schedule award for a hearing loss.

On December 10, 1996 appellant, then a 52-year-old retired supervisory special agent, filed an occupational claim, Form CA-2, for a hearing loss. He stated that he had exposure to firearms and "monitoring duties discussion with other retirees." Appellant retired on September 30, 1996. The Office of Workers' Compensation Programs accepted that appellant sustained a hearing loss due to loud noise in both ears. By decision dated December 16, 1997, the Office found that appellant had no ratable hearing loss and that the hearing aids would be of no medical benefit.

The Board has duly reviewed the case record and concludes that appellant has not established that he is entitled to a schedule award for a hearing loss.

The record contains the results of several audiograms including those dated March 18, 1986 and August 2, 1996. In a report dated February 11, 1997, the district medical adviser reviewed the results of the August 2, 1996 audiogram and found that in appellant's left ear a mild "dip" occurred at 4,000 and 8,000 hertz but otherwise all the results were within normal limits. He found that hearing in appellant's right ear was well within normal limits up through 2,000 hertz and a moderate "notch" existed at 3,000 hertz which more likely than not was due to many years of exposure to gunfire noise. The district medical adviser stated that a mild "dip" in the right ear at 3,000 hertz was present in January 1979, ten years after appellant had been appointed as a special agent with the employing establishment. He concluded that as of August 2, 1996, appellant's hearing loss was not compensable by the Office's criteria but he recommended that audiological and otological examinations be obtained for the purpose of verifying the present status of appellant's hearing.

In his report dated May 29, 1997, Dr. Richard S. Hodgson, a second opinion physician and a Board-certified otolaryngologist, considered appellant's history of injury, performed a physical examination and diagnosed mild bilateral high frequency loss. He performed an audiogram on appellant on May 29, 1997 with results in the right ear of 10 decibels at 500 hertz, 5 decibels at 1,000 hertz, 5 decibels at 2,000 hertz and 30 decibels at 3,000 hertz and in the left ear of 10 decibels at 500 hertz, 10 decibels at 1,000 hertz and 0 decibels at 2,000 and 3,000 hertz.

In an undated report, the district medical adviser indicated that appellant reached maximum medical improvement on May 29, 1997 and applied the results of the May 19, 1997 audiogram to the formula under the Federal Employees' Compensation Act for determining the extent of hearing loss and concluded that appellant had a zero percent binaural loss.

The schedule award provision of the Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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* (fourth edition 1993) 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 and the "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 speech under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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 5, then added to the greater loss and the total is divided by 6, to arrive at the amount of the binaural loss.⁴ The Board has concurred in the Office's use of this standard for evaluating hearing loss for schedule award purposes.⁵

In the present case, in his undated report, the district medical adviser determined that appellant had a zero percent binaural loss based on the most recent audiogram of record dated May 27, 1997.⁶ In his report, the district medical adviser determined that on the May 27, 1997

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *See also* A.M.A., *Guides* at 224 (4th ed. 1993).

⁵ *Daniel C. Goings*, *supra* note 2.

⁶ The audiogram was performed by an audiologist, S. Hogue. The test results were approved as valid by

audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear, 10, 5, 5 and 30 decibels respectively, totaled 50 decibels which divided by 4 yielded the average hearing loss at those frequencies of 12.5 decibels. He reduced the average 12.5 decibels by 25 decibels to equal 0 which he multiplied by the established factor of 1.5 to compute a 0 percent monaural loss for the right ear. The district medical adviser totaled the decibel losses at the above-mentioned frequencies for the left ear, 10, 10, 0 and 0 decibels respectively, at 20 which he divided by 4 to obtain the average hearing loss at those frequencies of 5 decibels. He reduced 5 decibels by the 25 decibel "fence" to equal 0, which he then multiplied by the established factor of 1.5 to compute a 0 monaural loss of the left ear. The district medical adviser then multiplied the 0 percent loss in the left ear by 5, added it to the 0 percent loss in the right ear and divided the sum by 6 to calculate appellant's binaural loss at 0 percent. The Board finds that the district medical adviser applied the proper standards to the May 27, 1997 audiogram results and properly determined that appellant has a 0 percent binaural loss. Appellant has not submitted any evidence to the contrary.

The decision of the Office of Workers' Compensation Programs dated December 16, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Dr. Hodgson, a Board-certified otolaryngologist.