

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID W. COPELAND and DEPARTMENT OF DEFENSE,
NATIONAL IMAGERY & MAPPING AGENCY, Bethesda, MD

*Docket No. 00-356; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

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

On March 25, 1999 appellant, then a 57-year-old former boiler operator and HVAC operator¹ filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a bilateral hearing loss in the course of his federal employment. Appellant stated that he first became aware of his illness on April 30, 1999. Medical and factual evidence in the record included test results from periodic audiograms performed by the employing establishment between October 15, 1990 and November 11, 1998.

By letter dated July 28, 1999, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts to Dr. Norman Lester, a Board-certified otolaryngologist for otologic evaluation and audiometric testing.

Dr. Lester performed an otologic evaluation of appellant and audiometric testing was conducted on his behalf on August 9, 1999. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear – 10, 10, 15 and 35 decibels; left ear – 10, 10, 10 and 40 decibels. The audiogram noted a calibration date of January 28, 1999.

In his report, Dr. Lester noted that appellant had evidence of bilateral high frequency sensorineural hearing loss, which he opined was related to noise exposure. He stated that hearing aids might be difficult to fit for appellant because his hearing is normal through the 2,000 Hertz level, but some of the newer digital aids may be tailored to fit his needs in the higher ranges.

¹ Appellant stopped working due to a back injury in January 1999.

In a report dated August 29, 1999, an Office medical adviser reviewed the medical evidence of record. Applying the Office's standardized guidelines to the August 9, 1999 findings, the Office's medical adviser determined that appellant did not have a ratable hearing loss. The medical adviser opined that a hearing aid was not warranted.

The Office accepted the claim for binaural sensorineural hearing loss.

By decision dated September 15, 1999, the Office determined that appellant sustained a hearing loss in the performance of duty but that, under the fourth edition of the A.M.A., *Guides*,² appellant's hearing loss was not ratable. The Office also denied the claim for additional medical benefits such as hearing aids.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified member of the body.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 determination is a matter which rests in the sound discretion of the Office.⁴ 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 a uniform standard applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the Office,⁶ and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

Under the A.M.A., *Guides*,⁸ hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a "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 sounds in everyday listening conditions.⁹ The remaining amount is multiplied by 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

² American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), hereafter A.M.A., *Guides*.

³ 5 U.S.C. § 8107.

⁴ See *Arthur E. Anderson*, 43 ECAB 691 (1992).

⁵ See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁷ *Danniel C. Goings*, 37 ECAB 781 (1986).

⁸ A.M.A., *Guides* (4th ed. 1993)

⁹ *Id.* at 224.

the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹⁰

The Board finds that the medical evidence of record does not support appellant's claim that he sustained a ratable hearing loss.

The Office medical adviser applied the Office's standardized procedures to the August 9, 1999 audiogram obtained by Dr. Lester, who had opined that appellant sustained an employment-related bilateral sensorineural loss of hearing. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz revealed losses of 10, 10, 15 and 35 decibels, respectively. These losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 10, 10, 10 and 40 decibels. These losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 was the reduced by 25 decibels, as discussed above, to equal 0 which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the zero by five to equal zero which was added to zero. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards, which are applied to all employees in hearing loss claims under the Act,¹¹ to the findings stated in Dr. Lester's August 9, 1999 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram¹² indicating that appellant has a compensable hearing loss. Thus, while appellant clearly has an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards and, accordingly is not compensable.¹³

¹⁰ *Id.*; see also *Daniel C. Goings*, *supra* note 7.

¹¹ See 5 U.S.C. § 8107(13).

¹² See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).

¹³ The Office also did not abuse its discretion in denying additional medical benefits were denied. While Dr. Lester opined that hearing aids might be tailored to help appellant, he opined that appellant would be a "difficult candidate" for a hearing aid and as his hearing was normal through 2,000 Hz. Furthermore, an Office medical adviser received the evidence and opined that hearing aids were not warranted.

The September 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.¹⁴

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

¹⁴ In appellant's October 4, 1999 application for review to the Board, he submitted additional medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c).