

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCIE A. VONDERHAAR and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Cleveland, OH

*Docket No. 00-1621; Submitted on the Record;
Issued April 30, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has sustained a compensable hearing loss causally related to factors of her federal employment.

On June 7, 1999 appellant, then a 50-year-old special agent, filed an occupational disease claim¹ alleging that she sustained hearing loss in both ears due to noise exposure at work. She stated that she first became aware of a hearing loss problem in the late 1980s and related it to her employment in February 1998. The employing establishment indicated that February 27, 1999 was the last day appellant was exposed to the conditions alleged to have caused her illness.²

Accompanying the claim, the employing establishment submitted appellant's June 7, 1999 statement, personnel papers and medical records which included hearing tests and audiograms.

The Office of Workers' Compensation Programs referred appellant to Dr. John David Schaefer, a Board-certified otolaryngologist, for an examination and evaluation of medical records. In a report dated August 26, 1999, Dr. Schaefer reported the findings of his examination of appellant that day and stated that appellant suffered from noise-induced sensorineural hearing loss.

Dr. Schaefer found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz): in the right ear decibel (dB) levels of 0, 5, 5 and 20, respectively; and in the left ear, dB levels of 5, 5, 10 and 20, respectively.

¹ On June 7, 1999 appellant also filed a Form CA-7 for a schedule award.

² Appellant retired on February 27, 1999.

On September 24, 1999 an Office medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Schaefer to determine that appellant had a nonratable bilateral hearing loss. The Office medical adviser indicated the date of maximum medical improvement was August 26, 1999.

By decision dated September 28, 1999, the Office accepted appellant's claim for a hearing loss due to her employment-related noise exposure. The Office determined, however, that appellant's hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, she was not entitled to a schedule award under the Federal Employees' Compensation Act.³ The Office found that appellant was entitled to medical benefits.⁴

By letter dated October 21, 1999, appellant requested reconsideration of the September 28, 1999 decision. By decision dated November 22, 1999, the Office affirmed the prior decision.

The Board finds that appellant does not have a compensable hearing loss.

The schedule award provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.⁵ 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.⁶ 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."⁷

Under the A.M.A., *Guides*, hearing loss is evaluated by determining dB loss at the frequency levels 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 dBs is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions.⁸ 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

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, in the September 28, 1999 decision, the Office incorrectly stated that accurate testing results were not obtained. Dr. Schaefer provided a report and complete testing results and the Office medical adviser properly applied the Office standards to those results to determine that appellant has an employment-related noise-induced sensorineural hearing loss, which was not severe enough to be considered ratable for schedule award purposes.

⁵ 5 U.S.C. § 8107.

⁶ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁷ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

⁸ A.M.A., *Guides*, 224.

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.⁹

The Office medical adviser applied the Office's standard procedures to the August 26, 1999 audiogram performed for Dr. Schaefer. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dB levels of 0, 5, 5 and 20 respectively. These dBs were totaled at 30 and were divided by 4 to obtain the average hearing loss at those cycles of 7.50 dBs. The average of 7.50 dBs was then reduced by 25 dBs (the first 25 dBs 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 Hz revealed dB levels of 5, 5, 10 and 20, respectively. These dBs were totaled at 40 and were divided by 4 to obtain the average hearing loss at those cycles of 10 dBs. The average of 10 was then reduced by 25 dBs (the first 25 dBs 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 left ear. Accordingly, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided in Dr. Schaefer's report dated August 26, 1999 and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above.

The November 22 and September 28, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 30, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁹ *Id*; see also *Danniel C. Goings*, *supra* note 6 at 784.