

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND F. RAINEY and DEPARTMENT OF THE ARMY,
Anniston, AL

*Docket No. 00-1812; Submitted on the Record;
Issued May 15, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had more than a 16 percent binaural hearing loss, for which he received a schedule award.

On April 6, 1999 appellant, then a 57-year-old chemical training surety specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a hearing loss causally related to factors of his federal employment. On the reverse of appellant's CA-2 form Mr. Anthony L. Burdell, appellant's supervisor, noted that "[t]he timeframe in which [appellant] suffered from his hearing loss was prior to his employment under my supervision"

Along with appellant's CA-2 form he submitted reports in which he stated:

"1. I have been employed by the [employing establishment] as a [c]hemical [s]urety [t]raining [s]pecialist from June 1991 until the present date.

"2. I am required to schedule, conduct and provide training for 450 individuals and 51 individual teams assigned to [t]oxic [c]hemical [a]gent [a]ccident and [i]ncident [r]esponse. Decontamination Teams that I train are required to utilize the M12A1 [d]econtaminating apparatus which is driven by a gasoline engine mounted on a large flat bed trailer.... There are [f]our separate teams with this type of decontamination apparatus assigned to them. Each team is required to receive two hours of team training monthly. During these training sessions for which I am present the gasoline engine on the decontamination apparatus is run for approximately one hour to simulate actual conditions. No hearing protection is required by regulation or local policy. The engine emits a constant loud volume of noise.

"3. My position also requires that I schedule and conduct depot-wide response exercises once every three months.... I perform exercise evaluations at a

minimum of four other chemical agent storage sites each year throughout the United States for a total of 8 to 10 exercises per year averaging from 4 to 6 hours per exercise. In order to make responses as realistic as possible smoke generators [are] utilized to indicate fire and smoke. Grenade simulators are used in exercise scenarios when explosions are required simulations. Grenade simulators emit a loud explosive sound when activated. I have frequently used them in the exercises I have conducted or evaluated since June ... 1991. There is no local policy or regulatory requirement mandating the wearing of hearing protection in these instances.... The M12A1 [d]econtamination [a]pparatus previously mentioned in paragraph 2 were left running for as long as one hour at a time at the simulated accident scenes where I am performing as a controller or evaluator.

“4. From March 1993 until October 1997, I was charged with the responsibility of load testing a large 900KW, [d]iesel powered electric emergency generator. This generator is used to supply emergency power to an Emergency Operations Center and must be tested a minimum of once a week for approximately 30 minutes each time. Due to the high volume noise level emitted from this generator hearing protection is required during operation. I wore earmuffs hearing protectors when I load tested which consisted of approximately two hours per month.

“1. My hearing has not improved. In fact it is affecting my home life as well as my work environment. My home life hearing loss problems consist of frequently asking my wife and children to repeat conversation that I either do n[o]t hear at all or I can[no]t hear clearly some words that they have spoken to me or someone else. My family also complains that I play the volume on the car radio or [television] too loudly. [Telep]hone conversations both at home and at work become embarrassing for me because I find myself asking the other party to speak a little louder or to repeat themselves.

“2. Attending business meetings and briefings have become a real challenge to me. Depending on the voice tone of the speaker I may be only able to hear bits and parts of whatever the briefer or speaker is talking about. In most cases I find myself constantly reading lips providing the speaker is one that maintains eye contact and I can sit close enough to do so. My position requires that I conduct and provide instruction to both large and small groups of employees. There have been instances that a member of the group would ask a question when my back was turned and I did n[o]t know about it until someone else brought it to my immediate attention.

“3. Due to my progressive work[-]related loss of hearing I am requesting that serious consideration be taken to reopening my case. I feel that as minimum medical benefits and hearing aids should at least be provided to assist me in maintaining my present position and employment.”

On November 10, 1999 the Office of Workers' Compensation Programs referred appellant along with a statement of accepted facts, all available noise exposure information and a

copy of appellant's medical records and audiograms to Dr. Howard Loveless, Jr., a Board-certified otolaryngologist, for audiometric testing and otologic evaluation and a medical opinion as to whether appellant sustained additional hearing loss as a result of exposure to hazardous noise at his federal employment.

In a memorandum received by the Office on December 2, 1999, Dr. Loveless indicated that he had examined appellant on November 22, 1999. Dr. Loveless noted that there was no significant variation of appellant's hearing loss as stated on the statement of accepted facts but indicated that appellant's "current audiogram reveals mild LF SNHZ falling to moderate severe HF SNHZ AU. This is worse than expected for a man his age." He indicated "yes" that appellant's hearing loss was due to workplace exposure. Dr. Loveless further indicated no history of otitis or ear surgery or diabetes. He diagnosed "sensorineural hearing loss -- secondary to noise exposure" due to noise exposure encountered at appellant's federal employment and supported this medical rationale noting "severity of hearing loss, pattern of hearing loss and progression of hearing loss are classic for noise-induced nerve hearing loss. Dr. Loveless recommended hearing protectors, yearly audiograms and hearing aid trial.

Dr. Loveless included a copy of the November 22, 1999 audiogram, which revealed a hearing loss in the right ear at the 500, 1,000, 2,000 and 3,000 cycles per second frequencies of 30, 25, 35 and 50 decibels, respectively and for the left ear 25, 30, 40 and 55 decibels.

In a schedule award dated April 12, 2000, the Office issued an award for a 16 percent bilateral hearing loss.

The schedule award provision of the Federal Employees' Compensation Act sets forth the numbers of weeks of compensation to be paid for permanent loss of use of the 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.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

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993) hearing loss is evaluated by determining decibels loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz). 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 speech in everyday conditions.⁴ 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

¹ 5 U.S.C. § 8107.

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

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

⁴ A.M.A., *Guides* at 224.

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.⁵

The Office medical adviser applied the Office's standardized procedures to the November 22, 1999 audiogram performed by Dr. Loveless. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels losses of 30, 25, 35 and 50, respectively. These decibels were totaled at 140 and were divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The average of 35 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 10 decibels, which was multiplied by the established factor of 1.5 to compute a 15 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 decibels levels of 25, 30, 40 and 55, respectively. These decibels were totaled at 150 and were divided by 4 to obtain the average hearing loss at those cycles of 37.50 decibels. The average of 37.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 12.50, which was multiplied by the established factor of 1.5 to compute a 18.75 percent loss of hearing for the left ear. The amount of the right ear (the better ear), 15 was multiplied by 5 and added to the amount for the left ear, 18.75, which totaled 93.75. The 93.75 was then divided by 6 to arrive at the percentage of binaural hearing loss. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser properly determined that appellant sustained a 16 percent binaural hearing loss.⁶

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided by Dr. Loveless' report dated November 22, 1999 and the accompanying audiogram. This resulted in a calculation of a 16 percent binaural hearing loss as set forth above. Therefore, the Office properly concluded that the evidence established that appellant has no more than a 16 percent binaural hearing loss for which he received a schedule award.

⁵ *Id*; see also *Danniel C. Goings*, *supra* note 2 at 784.

⁶ The Board notes that appellant's bilateral hearing loss totaled to 15.63 percent, which was rounded to 16.

The April 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member