

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY W. RIDINGER and TENNESSEE VALLEY AUTHORITY,
BULL RUN FOSSIL PLANT, Chattanooga, TN

*Docket No. 01-1664; Submitted on the Record;
Issued February 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable hearing loss in the performance of duty.

On June 28, 2000 appellant, then a 50-year-old production supervisor, filed a notice of occupational disease claiming that his hearing loss was caused by noise exposure in the course of his federal employment. He stated that when he was a public safety supervisor in 1980 through 1991 he was exposed to noise when qualifying officers with pistols, revolvers and long guns. Appellant first became aware of his hearing loss in March 1996 and realized that it was caused or aggravated by his employment on May 1, 2000.

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description and audiograms performed as part of appellant's fitness-for-duty evaluation from October 1982 through March 1996.¹

By letter dated February 16, 2001, the Office referred appellant to Dr. Frank Little, Jr., a Board-certified otolaryngologist, for otologic evaluation and audiometric testing. The Office provided Dr. Little with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Little evaluated appellant on March 2, 2001 and audiometric testing was performed on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed the following: right ear 15, 10, 20 and 50 decibels; left ear 20, 10, 20 and 40 decibels. In his report dated March 2, 2001, Dr. Little related appellant's history of noise

¹ These audiograms appear to have been prepared by a clinical audiologist; however, the tests were not reviewed or certified by a physician. See *Joshua A. Holmes*, 42 ECAB 231 (1990). The Office is under no obligation to review every uncertified audiogram which has not been prepared in connection with an examination by a medical specialist; see *Alfred Avelar*, 26 ECAB 426 (1975).

exposure and stated that the audiograms of appellant's hearing at the beginning of his significant noise exposure in federal employment demonstrated a mild high frequency sensory-neural loss, worse in the right ear. He opined that no other relevant noise exposure factors were identified except appellant's workplace. Dr. Little diagnosed noise induced sensorineural hearing loss compatible with appellant's exposure to noise in his federal employment. He recommended ongoing protection from loud noises.

In a decision dated March 16, 2001, the Office determined that appellant was exposed to hazardous noise in the course of his federal employment. However, the Office found that appellant was not entitled to a schedule award because the medical evidence of record failed to demonstrate a ratable hearing loss.

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

The schedule award provision of the Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* noted above using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a "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 sounds under everyday conditions. Each amount is then multiplied by 1.5. This would provide the percentage of hearing loss for each ear. To determine the percentage for a binaural hearing loss, the amount of the better ear is multiplied by 5 and added to the amount from the worse ear. The entire amount is then divided by 6 to arrive at the percentage of binaural hearing loss.⁵ The Board has

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ A.M.A., *Guides* pp. 246-50 (5th ed., 2000).

concurrent in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.⁶

In this case, the Office medical adviser applied the Office's standard procedures to the March 2, 2001 audiogram performed for Dr. Little. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 10, 20 and 50 decibels respectively. These decibel losses were totaled at 95 and divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal -1.25 decibels which was multiplied by the established factor 1.5 to compute a 0 percent loss of hearing for the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 10, 20 and 40 decibels respectively. These decibel losses were totaled at 90 and divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels to equal 0 decibels for the left ear. Accordingly, the Office medical adviser calculated appellant's hearing loss under Office standardized procedures to be nonratable for both the left and right ears.

The Board finds that the Office medical adviser and consulting audiologist applied the proper standards to the findings stated in Dr. Little's March 2, 2001 report. This resulted in a calculation of 0 percent monaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable.

⁶ *Daniel C. Goings*, 37 ECAB 781 (1986). The Board notes that in this case, the Office based its March 7, 2001 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for hearing loss remains unchanged. A.M.A., *Guides*, pp. 224-27 (4th ed., 1993); pp. 246-50 (5th ed., 2000). Therefore, it was harmless error for the Office to use the fourth edition, rather than the fifth edition of the A.M.A., *Guides* to calculate a schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated March 16, 2001 is hereby affirmed.

Dated, Washington, DC
February 15, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member