

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES H. SAUNDERS and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Jasper, AL

*Docket No. 01-1501; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

On December 23, 1999 appellant, then a 44-year-old coal mine inspector, filed a notice of occupational disease alleging that he sustained bilateral hearing loss as a result of exposure to noise from mechanized mining machines and explosives used in the daily operation of the mines. The date of last exposure to noise was December 22, 1999.

At the request of the Office of Workers' Compensation Programs, appellant submitted additional evidence including copies of periodic audiological test results dated December 1, 1997, April 1, 1992, May 4, 1987, May 15, 1984, April 27, 1981 and April 28, 1978.¹

By letter dated June 15, 2000, the Office referred appellant to Dr. Dennis Pappas, a Board-certified otolaryngologist, for an otologic evaluation and audiometric testing. The Office provided Dr. Pappas with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Pappas evaluated appellant on July 6, 2000 and audiometric testing was performed 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 10, 10, 10 and 5 decibels; left ear 10, 10, 5 and 5 decibels. In his report dated July 6, 2000, Dr. Pappas opined that the audiogram demonstrated mild high frequency sensorineural loss, slightly worse on the right side with excellent discrimination scores. He further stated that appellant had zero hearing impairment in both the right and left ear according to hearing impairment calculation. Dr. Pappas recommended that appellant continue to wear hearing protection but did not prescribe any medical treatment.

¹ The April 1, 1992 audiogram was the only audiogram certified by a physician and it was reported as showing no hearing loss, see *Joshua A. Holmes*, 42 ECAB 231 (1990); *Alfred Avelar*, 26 ECAB 426 (1975).

In an October 16, 2000 letter, the Office advised appellant that his claim was accepted for bilateral sensorineural hearing loss. Appellant was further advised of his right to file for a schedule award.

Appellant subsequently filed a CA-7 claim for a schedule award on October 23, 2000.

On February 2, 2001 an Office medical adviser calculated appellant's percentage of hearing loss as zero percent monaural loss in the right ear, zero percent monaural loss in the left ear and zero percent binaural loss.

In a decision dated March 9, 2001, the Office advised appellant that his noise-induced hearing loss was not severe enough to be considered ratable for schedule award purposes.

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provision of the Federal Employees' Compensation 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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluation of schedule losses.

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz cycles per second. 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. 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 the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁴

In this case, the Office medical adviser applied the Office's standard procedures to the July 6, 2000 audiogram. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added up and averaged and the "fence" of 25 decibels was deducted.³ The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For hearing levels recorded in the right ear of 10, 10, 10 and 5 decibels respectively and the left ear of 10, 10, 5 and 5 decibels respectively, the above formula yields a nonratable hearing loss.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *James England*, 47 ECAB 115 (1995).

Thus, while the Office has accepted that appellant's employment-related noise exposure caused a bilateral hearing loss, the hearing loss is not sufficient, under the standards set forth in the A.M.A., *Guides*, to entitle appellant to a schedule award.

The decision of the Office of Workers' Compensation Programs dated March 9, 2001 is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member