U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME L. SIMPSON and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Washington, DC

Docket No. 02-1465; Submitted on the Record;
Issued October 4, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issue is whether appellant has more than a 14 percent binaural hearing loss for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a bilateral hearing loss.

In a report dated April 24, 2001, a referral physician, Dr. Mohammad Z. Iqbal, a Board-certified otolaryngologist, considered appellant's history of injury, performed a physical examination and reviewed an audiogram. He diagnosed high frequency sensorineural hearing loss, noise induced. Attached to his report was the audiogram and accompanying record showing that the audiogram was performed on April 3, 2001. In a report dated October 14, 2001, the Office medical adviser determined that appellant had a 14.37 percent binaural loss based on the April 3, 2001 audiogram.

By decision dated January 18, 2002, the Office issued appellant a schedule award for a 14 percent binaural hearing loss.

The Board finds that the Office medical adviser erred in calculating that appellant had a 14 percent binaural hearing loss.

The schedule award provision of the Federal Employees' Compensation Act[1] provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a

[1] 5 U.S.C. § 8107 *et seq.*

determination is a matter that rests in the sound discretion of the Office.[2] 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]

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[4] Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.[5] Then, the "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 speech under everyday conditions.[6] The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.[7] 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 loss.[8] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[9]

In this case, in a report dated October 14, 2001, the Office medical adviser reviewed the results of the most recent audiogram dated April 3, 2001. He determined that on the April 3, 2001 audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second of the right ear, 35, 25, 30 and 45 respectively, totaled 135, which divided by four yielded the average hearing loss at those frequencies of 33.75 decibels. The Office medical adviser reduced the 33.75 decibels by the 25 decibels "fence" to equal 8.75. He then multiplied 8.75 by the established factor of 1.5 to obtain a monaural loss in the right ear of 13.12 percent.

The Office medical adviser totaled the decibel losses at the above-mentioned frequencies for the left ear, 35, 30, 25 and 25 respectively, at 155, which he divided by 4 to obtain the average hearing loss at those frequencies of 38.75. He subtracted the 25 decibels fence from 38.75 to obtain a hearing impairment of 13.75 in the left ear. The Office medical adviser multiplied 13.75 by the established factor of 1.5 to obtain a monaural loss in the left ear of 20.62 percent. The Office medical adviser then multiplied 13.12 by 5, added it to the 20.62 monaural loss in the right ear and divided the sum by 6 to obtain a binaural loss of 14.37 percent.

---

[2] *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[3] *Marco A. Padilla*, 51 ECAB __ (Docket No. 98-1296, issued December 6, 1969); *Arthur E. Anderson*, *supra* note 2 at 697.

[4] A.M.A., *Guides* at 250 (5th ed. 2001).

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id.*

[9] *Donald E Stockstad*, 53 ECAB __ (Docket No. 01-1570, issued January 23, 2002), *petition granted* (Docket No. 01-1570, issued August 13, 2002).

The Board finds that the Office medical adviser properly used the A.M.A, *Guides* (5th ed. 2001) but his arithmetic is erroneous. In calculating the total frequencies of the left ear, the Office medical adviser erred in determining the total was 155 as the correct total of 35, 30, 25 and 25 is 115. Dividing 115 by 4 yields an average hearing loss of 28.75. Subtracting the 25 decibel fence from 28.75 equals 3.75. Multiplying 3.75 by 1.5 equals a monaural loss in the left ear of 5.63 percent. Adding 13.12 to the product of 5.63 times 5 and dividing the sum by 6 yields a binaural loss of 6.9 percent or, when rounded off, a 7 percent binaural loss. Appellant has not submitted any evidence showing he has greater than a 7 percent binaural loss.

The January 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC
October 4, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member