

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY T. PEAY and TENNESSEE VALLEY AUTHORITY,
PARADISE FOSSIL PLANT, Chattanooga, TN

*Docket No. 02-1015; Submitted on the Record;
Issued September 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant has a ratable loss of hearing, entitling him to a schedule award.

On July 31, 2001 appellant, then a 56-year-old maintenance mechanic/machinist, filed a claim alleging that his exposure over time to coal conveyors, associated machinery, coal moving equipment, air-operated hand tools and the noise of falling coal, caused him to develop a work-related hearing loss.

In support of his claim, appellant submitted a May 10, 2001 audiogram which demonstrated the following decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second 25, 20, 20 and 30 decibels on the left; and 30, 30, 15 and 30 decibels on the right.

On September 25, 2001 the Office of Workers' Compensation Programs determined that a second opinion evaluation was required and referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. James Fordice, a Board-certified otolaryngologist, for a physical examination and audiometric evaluation.

By report dated October 24, 2001, Dr. Fordice provided physical examination and audiometric testing results, finding that appellant had normal canals, drums and drum motility and that he had no medical condition which would explain his loss of hearing. Audiometric testing results for appellant were noted as demonstrating the following decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second: 10, 10, 15 and 35 decibels on the left; and 10, 5, 25 and 40 decibels on the right. Air and bone conduction testing results were noted to have no significant air-bone gap and speech reception threshold and auditory discrimination scores were found to be without discrepancy. Dr. Fordice diagnosed bilateral sensorineural hearing loss due to his exposure at work. The appropriate indices of trustworthiness were present with these audiogram testing results.

On November 5, 2001 the Office medical adviser applied the accepted standards for evaluation of audiometric testing results to Dr. Fordice's findings and calculated that appellant had zero percent monaural loss in each ear and consequently a zero percent binaural loss.

By decision dated November 6, 2001, the Office accepted appellant's claim for bilateral hearing loss due to his employment-related noise exposure. The Office advised, however, that appellant was not entitled to any schedule award as his accepted bilateral loss of hearing was not ratable under the Federal Employees' Compensation Act.

On December 2, 2001 appellant disagreed with the denial of entitlement to a schedule award and he resubmitted evidence previously submitted to the record and already considered by the Office.

By response dated February 14, 2002, the Office explained that appellant's claim had been accepted, that he was entitled to medical benefits, but that he was not entitled to a schedule award as his bilateral hearing loss was not severe enough to be ratable under the Act.¹

The Board finds that appellant has no ratable hearing loss which entitles him to a schedule award.

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

In the present case, the Office medical adviser applied this standardized procedure to appellant's October 24, 2001 audiogram with the following results: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second of 10, 5, 25 and 40 decibels

¹ As this letter does not constitute a formal final decision by the Office, the Board cannot now consider any of the evidence submitted therewith. *See* 20 C.F.R. § 501.2(c).

² A.M.A., *Guides* (5th edition 2001) at 250.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002).

respectively were totaled to equal 80 and then divided by 4 for an average decibel loss of 20. When the “fence” of 25 decibels was subtracted from the 20 decibel average loss, the result was 0 percent monaural loss in the right ear. Using the same procedure to evaluate the same frequency losses in appellant’s left ear of 10, 10, 15 and 35 decibels respectively, the average decibel loss was 70 which, when divided by 4, equaled 17.5 decibels. When the 25 decibel “fence” was subtracted, the result was 0 percent monaural loss in the left ear. Zero percent losses in each ear result in a zero percent binaural loss.

Therefore, although appellant’s claim for sensorineural hearing loss was accepted and although he consequently is entitled to medical benefits related to this loss, the severity of the loss is such that it is not now ratable under the Act and, therefore, is not now entitled to any schedule award for the loss.

After requesting reconsideration, however, appellant failed to submit any medical evidence supporting that his hearing loss is any greater than that already determined.⁸ The Office has set forth requirements for the medical evidence to be used in evaluating occupational hearing loss claims. The requirements, as set forth in the Office’s Federal (FECA) Procedure Manual provide that the employee undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otological examination be performed by different individuals as a method of evaluating reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist’s report include the date and hour of examination; date and hour of the employee’s last exposure to loud noise; a rationalized medical opinion regarding the relationship of the hearing loss to the employment-related noise exposure; and a statement on the reliability of the tests conducted.⁹ As appellant did not submit any further medical evidence supporting additional hearing loss that met these requirements, his disagreement with the Office determination has no evidentiary value in supporting his claim.¹⁰

Consequently, appellant has not established that he has a ratable loss of hearing entitling him to a schedule award under the Act.

⁸ The evidence submitted was repetitive of that previously submitted to the record.

⁹ See *Joshua A. Holmes*, 42 ECAB 231 (1990); *George L. Cooper*, 40 ECAB 296 (1988).

¹⁰ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 6, 2001 is hereby affirmed.

Dated, Washington, DC
September 13, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member