

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALTON M. WILLIAMS and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Warner Robins, GA

*Docket No. 02-1087; Submitted on the Record;
Issued September 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he sustained greater than a two percent permanent loss of hearing in the left ear, for which he received a schedule award and whether he sustained any ratable hearing loss in the right ear.

This case was previously on appeal before the Board.¹ The relevant facts are set forth in the November 6, 2001 decision. The Board remanded the case for the Office of Workers' Compensation Programs to obtain a reasoned medical opinion regarding which audiogram most accurately reflected appellant's employment-related hearing loss.

On remand, the Office requested an opinion from the Office medical adviser regarding his findings for schedule award purposes. The Office also requested that the Office medical adviser review the medical records and the Board's November 6, 2001 decision.

In a report dated November 21, 2001, the Office medical adviser indicated that he was responding to the Office's memorandum of November 16, 2001 and the Board's decision of November 6, 2001, requesting a rationalized opinion for his selection of one audiogram over the other when making his determination on appellant's schedule award. The Office medical adviser explained that noise-induced hearing losses do not progress following removal from hazardous noise sources. He indicated that the audiogram taken on September 10, 1975 shortly prior to appellant's retirement on August 11, 1976 seemed appropriate for determining appellant's work-related hearing loss. The Office medical adviser explained that noise-related hearing loss is the result of chronic exposure, emphasizing "prolonged exposure." Dr. G.E. Anderson, Jr., also referred to an article from the New England Journal of Medicine dated October 17, 1993, indicating noise-induced hearing loss was also due to "repeated exposure to loud noise over many years" (up to 20 or more) and cited to Osgothorpe and Klein; Hearing Compensation Evaluation American Academy of Otolaryngology 1989. Dr. Anderson explained that the period

¹ Docket 01-421.

of time from September 10, 1975 to August 11, 1976, seemed insignificant in comparison to many prior years of work exposure and any hearing loss that might have developed between retirement on August 11, 1976 and Dr. Thomas M. Crews' audiogram on June 26, 2000. Dr. Anderson further opined that the September 10, 1975 study incorporated essentially all of appellant's federally-related noise-induced hearing loss and was suitable for calculating the schedule award.

By decision dated December 14, 2001, the Office denied appellant's claim for an increased schedule award and found that appellant was not entitled to an additional impairment rating for his noise-induced hearing loss.

The Board finds that appellant has not met his burden of proof to establish that he sustained greater than a two percent permanent loss of hearing in the left ear or any ratable hearing loss in the right ear.

The Federal Employees' Compensation Act² schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule. The Act, however, does not specify the manner by 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.³ 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."⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).⁵ 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.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ The binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural hearing 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.⁹ The Board has

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

⁵ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁶ A.M.A., *Guides*, 224-25 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

concurrent in the Office's adoption of this standard for evaluating hearing losses.¹⁰ In addition, the Office's procedures require that all claims for hearing loss due to its acoustic trauma, require an opinion from a Board-certified specialist in otolaryngology.¹¹ The procedure manual further indicated that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA), or state licensure as an audiologist.¹²

In the present case, the Office medical adviser explained his reasons for selecting the September 10, 1975, audiogram over the more recent audiogram of June 16, 2000. He explained that noise-induced hearing losses do not progress following removal from hazardous noise sources. He also explained that noise-related hearing loss is the result of chronic exposure, "prolonged exposure." Dr. Anderson also referred to an article from the New England Journal of Medicine dated October 17, 1993, indicating it was also due to "repeated exposure to loud noise over many years" (up to 20 or more) and cited to Osgothorpe and Klein; Hearing Compensation Evaluation American Academy of Otolaryngology 1989. He explained that the period of time from May 10, 1975 to August 11, 1976 seemed insignificant in comparison to many prior years of work exposure and any hearing loss that might have developed between retirement on August 11, 1976 and Dr. Crews' audiogram on June 26, 2000. Dr. Anderson further opined that the October 9, 1975 study incorporated essentially all of appellant's federally-related noise-induced hearing loss and was suitable for calculating the schedule award, as it was closer to his federal employment and more accurately reflected appellant's employment-related loss, as opposed to the more recent audiogram obtained in 2000.

The record reflects that on July 3, 2000 the Office medical adviser applied the Office's standardized procedures to the September 10, 1975 audiogram. He found that testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed 10, 35, 25 and 25 decibels, respectively. These decibels were totaled to 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 42.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss of hearing in the right ear. Testing for the left ear revealed decibel losses of 15, 40, 35 and 15 decibels, respectively. These decibel losses were totaled at 105 and then divided by 4 to obtain an average hearing loss at those cycles of 26.25 decibels. This average was reduced by 25 decibels to equal 1.25 decibels, which was multiplied by 1.5 to arrive at a 1.88. This figure was properly rounded-up to two percent¹³ monaural hearing loss in the left ear. A hearing aid was authorized and a diagnosis of bilateral sensorineural hearing loss with a schedule award for monaural loss of two percent in the left ear was authorized. There was no ratable hearing loss in

¹⁰ *Id.*

¹¹ *Supra* note 3.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

the right ear. Consequently, the reliable evidence of record does not establish that appellant has greater than a two percent monaural loss of hearing in the left ear.

A schedule award under the Act is paid for permanent impairment involving the loss or loss of use of certain members of the body. The schedule award provides for the payment of compensation for a specific number of weeks as prescribed in the statute.¹⁴ With respect to schedule awards for hearing impairments, the pertinent provision of the Act provides that, for a total, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation.¹⁵ In the instant case, appellant does not have a total, or 100 percent monaural hearing loss, but rather at most a 2 percent monaural hearing loss, which the Office has determined was employment related. As appellant has no more than a 2 percent loss of use of his left ear, he is entitled to 2 percent of the 52 weeks of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

The December 14, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 9, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

¹⁵ 5 U.S.C. § 8107.