

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE L. FULLER and U.S. POSTAL SERVICE,
POST OFFICE, Oakwood, TX

*Docket No. 02-1181; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained more than a 23 percent binaural hearing loss, for which he received a schedule award.

On August 28, 2000, appellant, then a 50-year-old automation clerk, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to hazardous noise at work. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related binaural hearing loss. By decision dated February 25, 2002, the Office granted appellant a schedule award for a 23 percent binaural hearing loss. The award ran for 46 weeks from November 20, 2001 to February 23, 2002.

The Board finds that the case is not in posture for decision regarding whether appellant has more than a 23 percent binaural hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.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 a factor of 1.5 to arrive at the percentage of monaural hearing 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 hearing loss.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

The Office based its February 25, 2002 schedule award on a January 17, 2002 report of an Office medical adviser who calculated that appellant had a 23 percent binaural hearing loss according to the standards of the A.M.A., *Guides*. The Office medical adviser based his calculations on the findings of a November 23, 2001 audiogram obtained by Dr. Andrew J. Lehr, a Board-certified otolaryngologist who served as an Office referral physician. In his November 23, 2001 report, Dr. Lehr indicated that appellant had a binaural hearing loss due to employment factors and presbycusis.

The Board notes, however, that the record contains other evidence which suggests that appellant has more than a 23 percent binaural hearing loss. In a November 2, 2001 report, another Office medical adviser calculated that appellant had a 40 percent binaural hearing loss according to the standards of the A.M.A., *Guides*. This Office medical adviser based his calculations on the findings of an August 20, 2001 audiogram obtained by Dr. Donald Matheson, a Board-certified otolaryngologist who served as an Office referral physician. In his September 4, 2001 report, Dr. Matheson indicated that all or most of appellant’s binaural hearing loss was employment related.¹⁰

The second Office medical adviser indicated that the November 20, 2001 audiogram was chosen for evaluation because it was the most recent audiogram. However, he did not

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 for recon. granted* (issued August 13, 2002).

¹⁰ Dr. Matheson also indicated that appellant had an additional five percent impairment due to tinnitus which impacted his ability to perform the activities of daily living. Moreover, this Office medical adviser indicated in a June 26, 2001 report that appellant had a 41 percent binaural hearing loss. He based his calculations on the findings of a February 26, 2001 audiogram obtained by Dr. Matheson, who noted the similarity between the February 26 and August 20, 2001 findings; in his February 26, 2001 report, he also indicated that appellant had an additional five percent impairment due to tinnitus.

adequately explain why the November 20, 2001 assessment of appellant's hearing served as a more appropriate basis for evaluation than the earlier assessments. Such explanation would be particularly necessary given that the August 20, 2001 assessment was made relatively close in time to the November 20, 2001 assessment. It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹¹ Therefore, the case should be remanded to the Office for further development concerning the extent of appellant's hearing loss. After such development as it deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated February 25, 2002 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 6, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).