

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH K. GALLANT and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION, New York, NY

*Docket No. 01-1996; Submitted on the Record;  
Issued January 23, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable hearing loss causally related to factors of his employment.

On December 22, 2000 appellant, then a 52-year-old retired special agent, filed an occupational disease claim alleging that he sustained a hearing loss due to extensive firearms training during 23 years at the employing establishment.

By letter dated March 20, 2001, the Office of Workers' Compensation Programs referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. Edward J. Sarti, a Board-certified otolaryngologist, for an audiologic and otologic evaluation and an opinion of whether appellant had any hearing loss causally related to his employment.

In a report dated April 4, 2001, Dr. Edward J. Sarti, a Board-certified otolaryngologist, stated that appellant was exposed to loud noise during firearms practice required in his job. He stated that appellant had a mild high frequency hearing loss in both ears and tinnitus and these conditions were causally related to appellant's job. Dr. Sarti provided the results of audiometric testing performed on April 4, 2001. The testing revealed the following results at 500, 1,000, 2,000 and 3,000 cycles per second: 10, 10, 10 and 15 decibels in the left ear and 5, 5, 5 and 5 decibels in the right ear.

In a report dated June 16, 2001, Ellen P. Lafargue, an audiologist and Office medical consultant, reviewed Dr. Sarti's report and stated that the audiogram was complete and appeared reliable. She stated that the medical evidence supported noise exposure during federal employment as the cause of appellant's hearing loss and tinnitus but the hearing loss was unratable (0 percent) in both ears based on the audiometric test results and the Office's procedures for calculating hearing loss.

By decision dated June 25, 2001, the Office accepted that appellant sustained a hearing loss but denied appellant's claim for a schedule award on the grounds that the evidence of record established that his hearing loss was not severe enough to be ratable.

The Board finds that appellant did not sustain a ratable hearing loss causally related to factors of his employment.

The Federal Employees' Compensation Act<sup>1</sup> schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss or loss of use of members of the body that are listed in the schedule.<sup>2</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>3</sup> 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."<sup>4</sup>

The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> 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. 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. The remaining amount is multiplied by a factor of 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.<sup>7</sup>

In this case, audiometric testing performed on April 4, 2001 revealed that appellant had decibel losses of 10, 10, 10 and 15 and in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively. These decibel losses total 45 decibels which, divided by 4, equal an average loss of 11.25 decibels. This average loss, reduced by 25 decibels (25 decibels being discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5, equals a 0 percent hearing loss in the left ear. Testing for the right ear revealed decibel losses of 5, 5, 5 and 5 and at the frequency levels of 500, 1,000, 2,000 and 3,000

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> See *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>4</sup> *Id.*

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Stuart M. Cole*, 46 ECAB 1011 (1995).

<sup>7</sup> A.M.A., *Guides* 224-29 (5<sup>th</sup> ed. 2001)

cycles per second, respectively. These decibel losses total 20 decibels and, divided by 4, equal an average hearing loss of 5 decibels. This average loss, reduced by 25 decibels, equals 0 which, when multiplied by the established factor of 1.5, equals a 0 percent hearing loss in the right ear. Thus, appellant's hearing loss is not ratable for schedule award purposes.

On appeal, appellant asserts that he is entitled to compensation for his tinnitus condition. However, there is no basis for paying a schedule award for tinnitus unless the medical evidence establishes that the condition is in the presence of a ratable loss of hearing and only "if the tinnitus impacts the ability to perform activities of daily living." There is no evidence that appellant has sustained a ratable loss of hearing in this case.<sup>8</sup>

Since appellant has failed to meet his burden of proof in establishing that his tinnitus condition caused or contributed to a ratable hearing loss and since appellant has not established that the tinnitus condition has caused vestibular feature disturbances, there is no basis for paying appellant compensation for a tinnitus condition.

The decision of the Office of Workers' Compensation Programs dated June 25, 2001 is affirmed.

Dated, Washington, DC  
January 23, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Juan A. Trevino*, 54 ECAB \_\_\_\_ (Docket No. 02-1602, issued January 17, 2003).