

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YANCY H. ALSTON and DEPARTMENT OF THE ARMY,
ALABAMA NATIONAL GUARD, Montgomery, AL

*Docket No. 02-823; Submitted on the Record;
Issued January 6, 2003*

DECISION and ORDER

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

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

On May 1, 2000 appellant, then a 51-year-old automotive worker, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He stated that he first became aware that he had a hearing loss problem on November 8, 1981 and related it to his employment on July 1, 1984. The employing establishment stated that appellant is still exposed to the conditions alleged to have caused his hearing loss.

Accompanying the claim, the employing establishment submitted, among other things, appellant's job description, hearing conservation data and noise exposure surveys.

On November 16, 2000 the Office of Workers' Compensation Programs referred appellant, along with the case record and a statement of accepted facts to Dr. John S. Keebler, a Board-certified otolaryngologist, for an examination and evaluation of medical records.

On December 12, 2000 the record was supplemented with Dr. Keebler's December 6, 2000 report of his examination of appellant that day, an auditory brainstem response (ABR) and evoked potential test on December 7, 2000 and the November 30, 2000 audiological evaluation performed for the doctor and certified by him. In his report, Dr. Keebler stated that the earliest hearing test available was performed in 1984 and that appellant has an asymmetrical (right ear) sensorineural hearing loss since 1984, probably noise induced prior to 1984.

Dr. Keebler found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz): in the right ear decibel levels of 15, 5, 15 and 55, respectively; and in the left ear, decibel levels of 20, 10, 10 and 20, respectively.

By decision dated January 8, 2001, the Office denied appellant's claim on the grounds that the weight of the medical evidence failed to establish that appellant's hearing loss was causally related to his federal employment.

By letter dated January 11, 2001, appellant requested a review of the written record by an Office hearing representative.

On May 23, 2001, after a review of the written record, the hearing representative vacated the Office's January 8, 2001 decision and remanded the case for further development of the evidence. The hearing representative noted that the Office denied benefits on the basis that there were no audiograms prior to 1984 but also found appellant had prior nonfederal noise exposure during that period.

On June 15, 2001 the Office referred the record to a district medical adviser for an opinion on whether or not noise exposure during appellant's federal employment caused or contributed to his loss of hearing. In a June 18, 2001 report, the district medical adviser stated that "... [appellant] began federal employment in 1971 (SOAF) and the right[-]sided [hearing loss] very possibly occurred during that phase of tenure and thus[,] is [causally related,] giving him benefit of doubt. Even so, [hearing loss] is not ratable...." The district medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Keebler to determine that appellant had a nonratable hearing loss bilaterally.¹ The district medical adviser indicated that the date of maximum medical improvement was November 30, 2000.

By decision dated August 15, 2001, the Office accepted appellant's claim for a hearing loss due to his employment-related noise exposure. The Office determined, however, that appellant's hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees' Compensation Act. The Office found that appellant was entitled to medical benefits.

The Board finds that appellant does not have a compensable hearing loss.

The schedule award provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.² 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 determinations is a matter which rests in the sound discretion of the Office.³ However, as a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted the use of the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴

¹ The district medical adviser stated that appellant's left ear hearing was normal in all tones.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.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 (dBs) is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs 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 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

The district medical adviser applied the Office’s standardized procedures to the November 30, 2000, audiogram performed for Dr. Keebler. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels levels of 15, 5, 15 and 55, respectively. These decibels were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 dBs. The average of 22.5 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels levels of 20, 10, 10 and 20, respectively. These decibels were totaled at 60 and were divided by 4 to obtain the average hearing loss at those cycles of 15 dBs. The average of 15 was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office’s standardized procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the district medical adviser properly applied the appropriate standards to the findings provided in Dr. Keebler’s report dated December 6, 2000 and the accompanying November 30, 2000 audiogram.¹¹ This resulted in a calculation of a nonratable hearing loss as set forth above.

The decisions dated August 15 and May 23, 2001 of the Office of Workers’ Compensation Programs are affirmed.

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002).

¹¹ The district medical adviser stated that appellant’s left ear hearing was normal in all tones. The Board notes that the decibel levels found in the left ear support the medical adviser’s statement and the finding of Dr. Keebler.

Dated, Washington, DC
January 6, 2003

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member