

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOWELL W. TAYLOR and TENNESSEE VALLEY AUTHORITY,
PARADISE FOSSIL PLANT, Drakesboro, KY

*Docket No. 03-1134; Submitted on the Record;
Issued July 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained any ratable hearing loss causally related to factors of his federal employment.

On June 21, 2002 appellant, then a 58-year-old instrument mechanic, filed an occupational disease claim alleging that he first realized that his hearing loss was due to factors of his employment in 1992. On the reverse of the claim form, the employing establishment indicated that appellant was last exposed to conditions alleged to have caused his hearing loss on July 6, 2002. Appellant's claim was accompanied by the employing establishment's controversion of his claim, employment records and employing establishment audiograms that showed moderate hearing loss.

After reviewing the evidence of record, the Office of Workers' Compensation Programs referred appellant to David Alan Mann, an audiologist, and Dr. Linda Mumford, a Board-certified otolaryngologist, for a second opinion medical examination.

Mr. Mann submitted a December 30, 2002 audiogram report revealing that testing for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 15, 10, 20 and 25, respectively, while testing for the left ear revealed decibel losses of 10, 10, 20 and 40. In her report of the same date, Dr. Mumford opined that appellant had sensorineural hearing loss due to noise exposure at the employing establishment.

On January 15, 2003 the Office requested that an Office medical adviser review Mr. Mann's December 30, 2002 audiogram. On that date, the Office medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's current standards for evaluating hearing loss to the results of Mr. Mann's December 30, 2002 audiogram. The medical adviser concluded that appellant had a zero percent monaural hearing loss in the right ear, a zero percent monaural hearing loss in the left ear and no binaural hearing loss.

By decision dated March 4, 2003, the Office accepted appellant's claim for a hearing loss due to employment-related noise exposure but, found that the hearing loss was not severe enough to be considered ratable for purposes of a schedule award.

The Board finds that appellant has failed to establish that he sustained any ratable hearing loss causally related to factors of his federal employment.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ 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*, has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*, 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 and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides*, point out, losses below 25 decibels result in no impairment in a person's ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by 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. The Board has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.⁶

In this case, an Office medical adviser applied the Office's standardized procedures to the December 30, 2002 audiogram performed by Mr. Mann. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 10, 20 and 25 respectively. These decibels were totaled at 70 and were divided by 4 to obtain an average hearing loss at those cycles of 17.50 decibels. The average of 17.50 decibels was then reduced by 25 decibels (the first 25 decibels 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.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ 5 U.S.C. § 8107(c)(19).

⁴ See *supra* note 2.

⁵ Charles H. Potter, 39 ECAB 645 (1988).

⁶ Danniel C. Goings, 37 ECAB 781 (1986).

Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 10, 20 and 40 respectively. These decibels were totaled at 80 and were divided by 4 to obtain the average hearing loss at those cycles of 20 decibels. The average of 20 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Mr. Mann's December 30, 2002 audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above.⁷

The March 4, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ This decision does not affect appellant's entitlement to medical benefits for the accepted employment injury.