

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE A. NELSON and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, FL

*Docket No. 03-1984; Submitted on the Record;
Issued November 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than an 11 percent hearing loss in his left ear, for which he received a schedule award.

On February 19, 2002 appellant, then a 45-year-old training specialist, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a hearing loss as a result of working in a noisy environment as part of his federal employment. The Office of Workers' Compensation Programs referred appellant to Dr. John Keebler, a Board-certified otolaryngologist, for a hearing examination, who gave appellant an audiometric test on April 23, 2002. The Office referred a copy of this audiogram to the Office medical adviser, who determined in a report dated July 9, 2002, that appellant had an 11 percent hearing loss in his left ear. By letter dated July 11, 2002, the Office accepted appellant's claim for hearing loss in his left ear. On July 22, 2002 appellant filed a claim for a schedule award (Form CA-7). By decision dated March 5, 2003, the Office issued a schedule award for an 11 percent hearing loss to the left ear.

The Board has duly reviewed the case record and concludes that appellant did not establish that he had greater than an 11 percent hearing loss in his left ear, 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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.

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ 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.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

In a report dated July 9, 2002, the Office medical adviser reviewed the most recent audiogram of record, the April 23, 2002 audiogram. He determined that at frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second of the left ear, 15, 20, 45 and 50, decibels respectively, totaled 130, which divided by 4 yielded the average hearing loss at those frequencies of 32.5 decibels. The Office medical adviser reduced the average of 32.5 by the 25 decibel “fence” to equal 7.5. He then multiplied 7.5 by the established factor of 1.5 to obtain a monaural loss in the right ear of 11.25 percent, which he rounded down to 11 percent.⁷ The Office medical adviser properly determined that appellant sustained a hearing loss of 11 percent in his left ear. Appellant has not submitted evidence establishing that his hearing loss was greater than this amount.

³ A.M.A., *Guides* at 250 (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁷ The Office medical adviser indicated that hearing loss in the right ear was not considered work related pursuant to the opinion of the second opinion physician.

The decision of the Office of Workers' Compensation Programs dated March 5, 2003 is hereby affirmed.

Dated, Washington, DC
November 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member