

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER P. MORISSETTE and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 96-1501; Submitted on the Record;
Issued April 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a compensable binaural hearing loss causally related to factors of his federal employment.

On August 30, 1995 appellant, then a general foreman, filed a claim for an occupational disease (Form CA-2) alleging that he first became aware that his hearing loss was caused or aggravated by his employment on August 26, 1995. Appellant's claim was accompanied by employment records, a narrative statement and medical records, including audiogram test results.

By letter dated January 22, 1996, the Office of Workers' Compensation Programs referred appellant along with medical records and a statement of accepted facts to Dr. Siew Tso, a Board-certified otolaryngologist, for a second opinion examination. By letter of the same date, the Office advised Dr. Tso of the referral.

Dr. Tso submitted a February 20, 1996 medical report. An Office medical adviser reviewed the evidence of record and submitted a March 26, 1996 medical report.

By decision dated April 1, 1996, the Office accepted appellant's claim for hearing loss causally related to his employment, but found the evidence of record insufficient to establish that appellant sustained a ratable hearing loss pursuant to the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The schedule award provisions of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter

¹ See generally 5 U.S.C. §§ 8101-8193.

which rests in the sound discretion of the Office.² However, as a matter of administrative practice and to insure consistent results to all claimants, the Office has adopted and the Board has approved the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. 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* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.⁵

In a February 20, 1996 medical report, Dr. Tso indicated a history of appellant’s injury and his findings on physical examination. Dr. Tso noted the results of a February 12, 1996 audiogram performed by Marti Andrews, an audiologist. Audiometric testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 15, 15 and 45 respectively, and that testing of the left ear at the above frequency levels revealed decibel losses of 15, 15, 15 and 50 respectively. Based on this otologic evaluation of appellant, Dr. Tso opined that appellant had bilateral high frequency neurosensory hearing loss of a moderate to severe degree which was worse in the left ear. Dr. Tso further opined that it was probable that appellant’s hearing loss was a result of his exposure to loud noise at the employing establishment. Dr. Tso further opined that there was no other known etiology that could have caused appellant’s hearing loss. Dr. Tso recommended that appellant use ear protection when working among loud noise. Dr. Tso stated that appellant’s low and mid-frequency hearing was within normal range, but that appellant may try appropriate amplification of the high frequencies. Dr. Tso then recommended that appellant undergo annual hearing examinations.

In a March 26, 1996 report, the Office medical adviser applied the Office’s standardized procedures for evaluating hearing loss to the results of the February 12, 1996 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 15, 15 and 40 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss at those cycles of 21.24. The average of 21.24 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.⁶ Testing of the left ear at the same frequency levels revealed decibel losses of 15,

² *Richard Beggs*, 29 ECAB 398 (1977); *Danniel C. Goings*, 37 ECAB 781 (1986).

³ *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁴ A.M.A., *Guides*, (4th ed. 1993).

⁵ *Id.*; see also *Danniel C. Goings*, *supra* note 2.

⁶ The Board notes that the Office medical adviser inadvertently indicated that testing of the right ear at the frequency level of 3,000 revealed a decibel loss of 40 rather than 45 thus, the actual decibel losses for the right ear totaled at 90 and when this figure is divided by 4, the average hearing loss at the frequency levels of 500, 1,000, 2,000 and 3,000 is 22.5. However, the Board finds that this miscalculation does not affect the Office medical adviser’s determination that appellant had a zero percent loss of hearing for the right ear.

15, 15 and 50 respectively. These decibel losses were totaled at 95 and divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels to equal 0 which was multiplied by 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, the Office medical adviser determined that appellant had a zero percent binaural hearing loss. The Board finds that the Office medical adviser properly applied the standards to the February 12, 1996 audiogram in determining that appellant had a zero percent binaural hearing loss.

Appellant contends on appeal that he is entitled to a schedule award for binaural hearing loss. As noted above, the method used to determine the percentage of loss of use is a matter that rests in the sound discretion of the Office and the Board has concurred in the Office's adoption of the A.M.A., *Guides* as the standard for evaluating hearing loss for schedule award purposes. Although the record reveals that appellant was exposed to noise during his federal employment and the medical evidence supports that this exposure caused bilateral hearing loss, the extent of this loss was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁷

The April 1, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ Royce L. Chute, 36 ECAB 202 (1984).