U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFRED SLATER and DEPARTMENT OF THE ARMY, TOOLE ARMY DEPOT, Toole, Utah

Docket No. 96-1600; Submitted on the Record;
Issued April 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has established entitlement to more than a four percent binaural hearing loss for which he received a schedule award.

The Board finds that appellant has not established entitlement to more than a four percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act[1] and the implementing federal regulations[2] set forth the number of weeks of compensation to be paid for permanent loss of the member, functions and organs of the body listed in the schedule.[3] However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office of Workers' Compensation Programs.[4] The Office has determined that a single set of tables should govern all claimants, in order to maintain consistency and to ensure equal justice under the law.[5]

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.[6] The losses at each frequency

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[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.304.

[3] 5 U.S.C. § 8107.

[4] *See Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[5] *Id.*

[6] American Medical Association, *Guides to the Evaluation of Permanent Impairment*, pp. 224-25 (4th ed. 1993).

are added and averaged. A "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels (dBA) result in no impairment in the ability to hear everyday sounds under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural (one ear) hearing loss. The binaural (both ears) 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 loss and the amount of weeks of compensation is calculated pursuant to the weeks listed under the Act.[7] The Board notes that it has concurred in the Office's use of this standard for evaluating hearing losses for schedule award purposes.[8] The Board notes further that Office procedures require for reliability purposes, the date of calibration of the audiogram equipment, a certification of reliability, as well as speech reception thresholds and auditory discrimination scores to ensure reliable results.[9]

On December 19, 1994 appellant, then a 59-year-old locomotive engineer, filed a claim for a hearing loss due to his exposure to engines and train whistles or horns in his federal employment for 15 years. Appellant submitted audiometric test results from testing performed during his employment beginning in 1979.

The Office referred appellant, together with a statement of accepted facts to Dr. Leland Johnson, a Board-certified otolaryngologist. Dr. Johnson reported the presence of bilateral mid-high frequency sensorineural hearing loss prior to appellant's employment, based on the preemployment audiogram from June 1979. He addressed the noise exposure at work and indicated that it was of sufficient intensity and duration to have caused a progression in his hearing loss, documented by the audiograms. Dr. Johnson reviewed findings of audiometric testing performed on his behalf on July 28, 1995, which included the date of calibration and a statement of reliability of the testing. The results included the air conduction results, as

[7] FECA Program Memorandum No. 272 (issued February 24, 1986); *see also Danniel C. Goings*, *supra* note 7. The Act provides for 52 weeks of compensation for total loss of one ear and 200 weeks for total loss of both ears. 5 U.S.C. § 8107 (c) (13). Any loss less than total is compensated at a proportionate rate. Office procedures provides that on occasion, the allowances for loss of hearing based on a monaural loss would be greater than the combined value under binaural loss of hearing, and thus the monaural hearing loss should be used to calculate the greater amount of compensation. Program Memorandum No. 181 (issued November 26, 1984); *see Joseph J. Tillo*, 39 ECAB 1345 (1988).

[8] *See Donald A. Larson*, *supra* note 7.

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8 (October 1990). The procedures state, "[a] certification must accompany each audiological battery indicating that instrument calibration and the environment in which the tests were conducted met the accreditation standards of the Professional Services Board of ASHA (ANSI S3.6 (1969) and S3.1 (1977), respectively)." Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8 Exhibit 4 (December 1994).

well as bone conduction results and measurements on speech reception thresholds with auditory discrimination scores. The results showed a loss for the left ear at 500, 1,000, 2,000 and 3,000 cps, at 20, 30, 40 and 40 dBA, respectively, which totaled equal 130 divided by 4 to obtain the average hearing loss at those frequencies of 32.5. When subtracting the above referenced "fence" of 25 dBA, the loss equates to 7.5, which is multiplied by the stated amount of 1.5 to arrive 11.25 or rounded down to 11.[10] The results for the right ear at 500, 1,000, 2,000 and 3,000 cps, which were 15, 20, 35 and 35 dBA, respectively, are totaled at 105 and divided by 4 to obtain an average hearing loss at those frequencies of 26.25. The fence of 25 dBA is subtracted to arrive at 1.25, which is multiplied by 1.5 to equal 1.8, rounded up to 2. The binaural hearing loss is calculated by multiplying 2 by 5 to equal 10, which is added to 11 to equal 21, divided by 6 to equate to a 3.5 binaural hearing loss, rounded up to 4. The Board notes that while the Office medical adviser arrived at 3.75, as opposed to 3.5 based on the use of one incorrect figure, the result of a 4 percent binaural hearing loss is the same. Since the Act provides for 200 weeks of compensation for total loss of both ears, appellant is entitled to a maximum 8 weeks of compensation.[11]

Following the Office's June 23, 1995 decision issuing a schedule award for a 4 percent binaural hearing loss, appellant submitted a report from Dr. Craig Stevens, a Board-certified otolaryngologist, with attached results from audiometric testing performed on his behalf on September 26, 1995. While the results included speech reception thresholds and auditory discrimination scores and contained a note from the audiologist indicating that the results were accurate, the testing does not include the necessary information from the calibration equipment or a statement by Dr. Stevens relating to the accuracy of the testing in view of the reported results of air and bone conduction studies both, the speech reception thresholds and auditory discrimination scores. Without information on the calibration equipment, with the date of calibration, the report by Dr. Stevens based on audiometric testing on September 26, 1995 is of diminished probative value when compared with the report of Dr. Johnson. Accordingly, the Board finds that appellant has not established entitlement to greater than a four percent monaural hearing loss, for which he received a schedule award.

[10] The Board notes that the Office medical adviser incorrectly noted 35 dBA at the 1,000 cps level, instead of the 30 as reported by the audiologist. Accordingly, the Office medical adviser calculated an average loss of 33.75, which when reduced by the 25 dBA fence, equaled 8.75 and was multiplied by 1.5 to arrive at 13.12, rounded to 13.

[11] The Board notes that the calculations for hearing loss in both ears separately would in this instance equate to 6.76 weeks, which is lower than that calculated for the binaural loss.

The decisions of the Office of Workers' Compensation Programs dated April 29, 1996 and June 23, 1995 are hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member