

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY A. WILLARD and DEPARTMENT OF THE AIR FORCE,
TRAVIS AIR FORCE BASE, Calif.

*Docket No. 96-1821; Submitted on the Record;
Issued April 23, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

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

On July 6, 1995 appellant, then a motor vehicle operator, 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 10, 1994 because he had been working for over 25 years around high noise levels on the flight line without adequate hearing protection.¹ On that same date, appellant filed a schedule award (Form CA-7). Appellant's claims were accompanied by a history of appellant's employment with the employing establishment, employing establishment documents regarding noise exposure, appellant's September 7, 1994 narrative statement and a May 2, 1995 response from the employing establishment.

The Office of Workers' Compensation Programs referred appellant to Dr. R. Clifford Mihail, a Board-certified otolaryngologist, for a second opinion examination along with a statement of accepted facts and medical records, including audiogram test results.

Dr. Mihail submitted a December 6, 1995 medical report. An Office medical adviser reviewed the evidence of record and submitted a February 27, 1996 medical report.

By decision dated March 14, 1996, the Office found the evidence of record sufficient to establish that appellant had sustained permanent partial bilateral hearing loss causally related to his employment, but insufficient to establish that appellant had sustained a ratable hearing loss

¹ Appellant retired from the employing establishment on August 2, 1994.

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 Act² 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 which rests in the sound discretion of the Office.³ 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.⁴

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.⁵ 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.⁶

In a December 6, 1995 medical report, Dr. Mihail noted a review of medical records, a history of appellant's employment and medical treatment, and his findings on physical examination. Dr. Mihail also noted the results of a December 6, 1995 audiogram. Audiometric testing of the right ear at the frequency levels of 250, 500, 1,000, 2,000, 3,000, 4,000, 6,000, and 8,000 revealed decibel losses of 10, 10, 10, 20, 25, 25, 35, and 70 respectively, and that testing of the left ear at the above frequency levels revealed decibel losses of 10, 10, 10, 20, 35, 40, 50 and 80 respectively. Based on this otologic evaluation and appellant's history of noise exposure, Dr. Mihail opined that appellant had sustained a noise induced high frequency sensorineural hearing loss, and that this loss was associated and responsible for appellant's subjective tinnitus. He further opined that appellant's hearing loss appeared to be due in total to his work and exposure to hazardous levels of noise. Dr. Mihail stated that there was no apportionment of disability and no successful therapy although there had been many attempts in the past to treat tinnitus both medically and surgically. He further stated that although appellant's speech reception thresholds were normal, appellant may wish to try hearing aids or a masker for relief of his tinnitus. Dr. Mihail also stated that no further testing such as an auditory brain stem response or magnetic resonance imaging was necessary at that time due to the pattern of appellant's hearing loss, the asymmetry between the two ears and appellant's history of noise exposure which was consistent with his audiological findings.

² See generally 5 U.S.C. §§ 8101-8193.

³ *Richard Beggs*, 29 ECAB 398 (1977); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁴ *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁵ A.M.A., *Guides*, (4th ed. 1993).

⁶ *Id.*; see also *Danniel C. Goings*, *supra* note 3.

In a February 27, 1996 report, the Office medical adviser applied the Office's standardized procedures for evaluating hearing loss to the results of the December 6, 1995 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 10, 10, 20 and 25 respectively. These decibel losses were totaled at 65 and divided by 4 to obtain the average hearing loss at those cycles of 16.25. The average of 16.25 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. Testing of the left ear at the same frequency levels revealed decibel losses of 10, 10, 20 and 35 respectively. These decibel losses were totaled at 75 and divided by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 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 0 percent binaural hearing loss. The Board finds that the Office medical adviser properly applied the standards to the December 6, 1995 audiogram in determining that appellant had a 0 percent binaural hearing loss.

On appeal, appellant contends that he is entitled to a schedule award for permanent partial hearing loss caused by his federal employment. 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 his hearing loss is not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁷

The March 14, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.

⁷ Royce L. Chute, 36 ECAB 202 (1984).

April 23, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member