

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLIS R. MUIR and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Salt Lake City, Utah

*Docket No. 96-869; Submitted on the Record;
Issued February 19, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On March 7, 1995 appellant, then a 48-year-old construction inspector, filed a notice of occupational disease and claim for compensation (Form CA-2) claiming permanent loss of hearing due to his exposure to loud noises in the course of his federal employment. Appellant submits that he spent 11 years of his career working as a tunnel inspector underground and from July 1978 until he filed this claim he was exposed to all the hazards of heavy construction activity such as: tunnel boring machines, locomotives, air-operated pneumatic equipment, blasting and high volume airflow equipment. The record indicates that appellant continues to work and has missed no time from work.

By letter dated September 11, 1995, the Office of Workers' Compensation Programs referred appellant to Dr. Leland Johnson, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Johnson with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

In an undated report, Dr. Johnson presented an otologic evaluation of appellant, accompanied by a September 26, 1995 audiogram that was conducted on the doctor's behalf. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear at 15, 10, 30 and 50 decibels; and the left ear at 15, 15, 10 and 60 decibels. Dr. Johnson reviewed these findings and incorporated them into his report, together with his findings on otologic evaluation. Dr. Johnson diagnosed appellant with bilateral high frequency sensorineural hearing loss which was asymmetrical involving the left ear and noted that the baseline audiogram used for a comparison to the present audiogram was dated November 25, 1985.

An Office medical adviser reviewed Dr. Johnson's report and audiometric test results and concluded that appellant had an employment-related noise-induced loss of hearing. After applying the Office's current standards for evaluating hearing loss to the results of the September 26, 1995 audiometric tests, the Office medical adviser determined that appellant had a three percent binaural hearing loss.¹

By decision dated November 24, 1995, the Office awarded appellant a schedule award of compensation for a three percent permanent binaural hearing loss. This determination was based upon the calculation of its medical adviser, which, in turn, was made on the basis of the September 26, 1995 audiogram evaluation and the undated report submitted by Dr. Johnson. The period of the award ran from September 26 to November 6, 1995 and for six weeks of compensation.

By letter dated December 5, 1995, appellant requested reconsideration of the November 24, 1995 decision and submitted various medical documentation consisting of hearing examinations and audiograms ranging in dates from January 26, 1975 to March 4, 1990. In a merit decision dated December 12, 1995, the Office denied appellant's request for reconsideration, finding that the audiograms submitted on reconsideration did not conform with the Office's evidentiary standards for medical evidence in hearing loss cases and was insufficient to warrant modification of its prior November 25, 1995 decision.²

The Board finds that appellant has no more than a three percent binaural hearing loss for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks compensation is to be paid for permanent loss of use of the members of the body that are listed in the schedule.³ The Act, however does not specify the manner in which the percentage 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.⁴ However, as a matter of administrative practice the Board has stated: "For consistent results and to insure 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."⁵

¹ The Board notes that the Office medical adviser evaluated and presented testing at the frequency level of 2,000 decibels per cycle for the right ear and testing at the frequency level of 1,000 decibels per cycle for the left ear, at slightly higher decibels.

² Following the Office's December 12, 1995 merit decision, appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.

³ 5 U.S.C. § 8107.

⁴ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Henry L. King*, 25 ECAB 39 at 44 (1973); *August M. Buffa*, 12 ECAB 324 at 325 (1961).

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second.⁶ The losses at each frequency are added up and averaged and the “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 under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. 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.⁷ The Board has concurred in the Office’s use of this new standard for evaluating hearing losses for schedule award purposes.⁸

In the present case, the Office medical adviser properly applied the Office’s standardized procedures to the September 26, 1995, audiogram performed on behalf of Dr. Johnson. The frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear revealed decibel losses of 15, 15, 40 and 50, respectively, for a total of 120 decibels. This figure is divided by 4 to obtain the average hearing loss at those frequencies at 30. The average 30 is reduced by 25 decibels to equal 5, which is multiplied by the established factor of 1.5 to compute a 7.5 percent monaural hearing loss for the right ear.⁹ Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 20, 10 and 60 decibels respectively for a total of 105. This figure is divided by 4 to obtain the average hearing loss at those frequencies at 26.25. The average 26.25 is reduced by 25 decibels to equal 1.25, which is multiplied by the established factor of 1.5 to compute a 1.875 percent monaural hearing loss for the left ear. The 1.875 percent hearing loss for the left ear (the ear with the lesser loss) is multiplied by 5, to obtain the total of 9.375. The 9.375 is then added to the 7.5 percent hearing loss for the right ear (the ear with the greater loss) to obtain the total of 16.875. The 16.875 is divided by the sum of 6, in order to calculate a binaural loss of hearing of 2.8125, which is rounded up to 3 percent.¹⁰

In addition, the medical documentation, consisting of hearing examinations and audiograms submitted on reconsideration were of no probative value since they neither provided appellant’s last date and hour of exposure to loud noises; the history of the injury; a physician’s rationalized medical opinion regarding the causal relationship of the hearing loss to employment-related noise exposure and a physician’s recommendation for treatment; a certification of the calibration date; the environment in which these tests were performed; and a statement of

⁶ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th ed. 1993); See also *Terry A. Wethington*, 25 ECAB 247; *Kenneth T. Esther*, 25 ECAB 335.

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁸ *Danniel C. Goings*, *supra.*, note 3.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (October 1990).

¹⁰ *Id.*

reliability of the tests performed.¹¹ The Board has also held that an audiogram prepared by an audiologist must be certified by a physician as being accurate before it can be used to determine the percentage loss of hearing. Although the Office medical adviser may review any audiogram submitted to the record, the Office does not have to review every uncertified audiogram which has not been prepared in connection with an examination by a medical specialist. It is appellant's burden to submit a properly certified audiogram for review if he objects to the audiogram selected by the Office for the determination of the degree of his hearing loss.¹² The Office was therefore not required to rely on the hearing examinations and audiograms submitted on reconsideration in determining the degree of appellant's permanent impairment.

Appellant's belief that he is entitled to a larger amount of compensation due to his hearing loss is irrelevant to the uniform application of the schedule award standards for hearing loss. The Act provides that for a total, or 100 percent, loss of hearing in one ear, an employee shall receive 52 weeks of compensation.¹³ Consequently, the amount payable for a 3 percent permanent binaural hearing loss would be 3 percent of 52 weeks or 6.00 weeks of compensation.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 12 and November 24, 1995 are affirmed.

Dated, Washington, D.C.
February 19, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹² *Id.*

¹³ 5 U.S.C. § 8107(c)(13).