

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. JAMESSON and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Blaine, Wash.

*Docket No. 96-543; Submitted on the Record;
Issued March 20, 1998*

DECISION and ORDER

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

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

On April 28, 1994 appellant, a seized property specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 1994 he sustained ringing in his ears when a pistol cartridge exploded in an office alcove. Appellant did not stop work.

By letter dated July 12, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for an episode of tinnitus due to acoustic trauma.

On November 2, 1994 appellant filed a claim for a schedule award.

By decision dated November 27, 1995, the Office found the evidence of record insufficient to establish that appellant sustained a ratable hearing loss for purposes of entitlement to a schedule award under the Federal Employee's Compensation Act.

In a December 3, 1995 letter, appellant requested reconsideration of the Office's November 27, 1995 decision. On December 5, 1995 appellant filed an appeal with the Board.

By decision dated January 9, 1996, the Office denied appellant's request for reconsideration without reviewing the merits of the claim on the grounds that appellant failed to submit new and relevant evidence or new legal arguments.¹

¹ The Board finds that the Office's January 9, 1996 decision is null and void. The record reveals that the Office

The schedule award provisions of the 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* 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

Appellant submitted the June 7, 1994 medical report of Dr. Thomas L. Stackhouse, a Board-certified otolaryngologist and appellant’s treating physician. Applying the Office’s standardized procedures for evaluating hearing loss, Dr. Stackhouse indicated that testing of the right ear at the frequency levels of 500, 1,000, 2,000, 3,000 revealed decibel losses of 10, 10, 10 and 10 respectively. These decibel losses were totaled at 40 and divided by 4 to obtain the average hearing loss at those cycles of 10 decibels. The average of 10 decibels was then reduced by 25 decibels (the first 25 decibels are 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 above frequency levels revealed decibel losses of 20, 5, 5 and 5 respectively. These decibel losses were totaled at 35 and divided by 4 to obtain 9 to obtain the average hearing loss at those cycles of 9 decibels. The average of 9 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, Dr. Stackhouse determined that appellant had a 0 percent hearing loss of the right and left ear, and thus concluded that appellant had a 0 percent binaural hearing loss. Based on this otologic evaluation, Dr. Stackhouse opined that the evaluation was totally normal

issued its decision while appellant’s appeal was pending before the Board. The Board has held that the Office does not have jurisdiction to issue a decision on a petition for reconsideration while the case is pending before the Board on the same issue; see *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² See generally 5 U.S.C. § 8107.

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

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

⁵ A.M.A., *Guides*, (4th ed. 1993).

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

bilaterally and that appellant had sustained acoustic trauma with subsequent nonpulsatile tinnitus bilaterally which was possibly greater on the left side than on the right side. The Board finds that Dr. Stackhouse properly applied the standards to the June 7, 1994 audiogram.

Appellant also submitted Dr. Stackhouse's June 15, 1995 medical report. Dr. Stackhouse noted that testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000, revealed decibel losses of 15, 10, 5 and 5 respectively, and that testing of the left ear at the above frequency levels revealed decibel losses of 10, 5, 0 and 0 respectively. He opined that appellant had a mild hearing loss of the left ear due to the employment injury. Dr. Stackhouse further opined that there did not appear to be any disability associated with the hearing loss, but that there was some mild disability associated with the tinnitus which he rated at one to two percent. He concluded that appellant did not require any further medical treatment.

On July 10, 1995 the Office medical adviser applied the Office's standardized procedures for evaluating hearing loss to the results of Dr. Stackhouse's June 15, 1995 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 10, 5 and 5 respectively. These decibel losses were totaled at 35 and divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 8.75 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, 5, 0 and 0 respectively. These decibel losses were totaled at 15 and divided by 4 to obtain the average hearing loss at those cycles of 3.75 decibels. The average of 3.75 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 hearing loss of the right ear and a zero percent hearing loss of the left ear, and thus, concluded that appellant had a zero percent binaural hearing loss. The Board finds that the Office medical adviser properly applied the standards to the June 15, 1995 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 a 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 while working for the employing establishment and the medical evidence supports that this exposure caused tinnitus, the extent of appellant's binaural hearing loss is not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁷

The November 27, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 20, 1998

⁷ Royce L. Chute, 36 ECAB 202 (1984).

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member