

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFRED W. SCUDIERY and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, D.C.

*Docket No. 96-2056; Submitted on the Record;
Issued May 19, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant's binaural noise-induced hearing loss is ratable for schedule award purposes under the Federal Employees' Compensation Act.

On July 31, 1995 appellant, a retired special agent, firearms instructor, and SWAT team leader, filed a claim for loss of hearing due to hazardous noise exposure over the course of 20 years. Appellant had retired from the employing establishment on June 30, 1995. On May 10, 1996 the Office of Workers' Compensation Programs accepted that appellant had sustained binaural noise-induced hearing loss in the performance of his duties. At the time of his claim appellant also requested a schedule award. In support of his claim appellant submitted copies of his annual physical examinations including audiograms dating from 1969 to his retirement.

On February 29, 1996 the Office referred appellant to a Board-certified otolaryngologist, Dr. James A. Holliday, for examination and audiometric evaluation.

A March 21, 1996 audiogram was performed for Dr. Holliday by a certified audiologist which demonstrated the following hearing threshold levels in decibels at 500, 1,000, 2,000, and 3,000 cycles per second; 15, 15, 30, and 35 decibels on the left; and 15, 10, 20, and 25 decibels on the right. Speech audiometry and speech discrimination scores were also reported, as were acoustic stapedial reflex thresholds and tympanogram testing results. Air and bone conduction results were reported and were found to be fairly consistent.

On May 29, 1996 an Office medical adviser, Dr. Anderson, reviewed the testing results and diagnosed bilateral sensorineural hearing loss, and he calculated that appellant had a zero percent monaural hearing loss on the left and a zero percent monaural hearing loss on the right for schedule award purposes.

By decision dated June 6, 1996, the Office denied appellant's request for a schedule award finding that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) appellant's bilateral hearing loss was not severe enough to be considered ratable.

The Board finds that appellant's binaural loss of hearing is not ratable for schedule award purposes.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.¹ 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.² However, as a matter of administrative practice the Board has stated:

“For consistent results and to ensure 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 to all claimants.”³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides* using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. The losses at each frequency are added 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.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁵ 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.⁶ The Board has concurred in the Office's uses of this standard for evaluating hearing losses for schedule award purposes.⁷

In the instant case, the Office medical consultant, Dr. Anderson, applied the Office's standardized procedures to the results of the March 21, 1996 audiogram performed for Dr. Holliday. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 20 and 25 decibels respectively. These decibel losses were totaled at 70 and divided by 4 to obtain the average hearing loss at those cycles of

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁴ A.M.A., *Guides* (Fourth Edition 1993).

⁵ *Id.*

⁶ *See also* FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Danniel C. Goings*, *supra* note 2.

17.50 decibels. The average of 17.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 30 and 35 decibels 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 (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical consultant determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical consultant applied the proper standards to the findings obtained for and reported in Dr. Holliday's 1996 report. This resulted in a calculation of a zero percent monaural hearing loss in each ear under these standards, and therefore, a nonratable and noncompensable hearing loss.

Appellant argues that he has a greater degree of loss of hearing than that demonstrated by the March 1996 audiogram and calculated by the Office, but the Board notes that the 1996 audiometric results are consistent with the results reported on his annual physical examinations over the preceding 10 years, and that the frequencies at which greater threshold decibel losses were demonstrated on the 1996 audiogram, 4,000 to 8,000 cycles per second, do not affect a claimant's ability to hear everyday sounds under everyday conditions, and are not, therefore, losses at frequencies that are compensable according to the A.M.A., *Guides*. Appellant further alleges that he has difficulty hearing and understanding normal conversational speech, but the Board notes that his speech audiometry, particularly his auditory discrimination scores, demonstrate 88 percent recognition on the right and 92 percent recognition on the left. Although appellant believes that he has a ratable binaural loss of hearing, he has not submitted any probative evidence to support that belief.

Therefore, the Board finds that the Office's determination based on the present evidence of record is correct.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 6, 1996 is hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member