

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. FRYER and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Alameda, Calif.

*Docket No. 97-565; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

On February 29, 1996 appellant, a 57-year-old equipment cleaner, filed a notice of occupational disease alleging that he sustained bilateral hearing loss as a result of exposure to hazardous noise in the performance of duty in his federal employment. Appellant indicated that he first became aware of his hearing condition in 1991 when he had a checkup and was told that he was losing his hearing in his left ear. On the reverse side of the notice, the employing establishment indicated that appellant had not stopped work.

At the request of the Office of Workers' Compensation Programs, the employing establishment submitted personnel records, periodic audiological tests results dated from 1983 through 1996, and a noise exposure summary with respect to appellant's job as an equipment cleaner.

By letter dated May 8, 1996, the Office referred appellant to Dr. Joel Ross, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation and review of medical records. In conjunction with that evaluation, an audiogram was obtained on June 28, 1996. In his report of July 16, 1996, Dr. Ross reviewed the June 28, 1996 audiogram and noted examination findings. The doctor stated that "in comparing the thresholds from 1983 to June 1996, the thresholds are normal in both ears from 500 through 3000 [hertz] (hz). At 4000 hz, the thresholds are 10 [decibels] (db) in the right ear and 65 db in the left. At 6000 hz, the thresholds are 30 db in the right ear and 80 db in the left ear. At 8,000 hz, the thresholds are 40 db in the right ear and 45 db in the left ear. There is some increase in hearing loss between 6000 and 8000 hz of a mild nature in the right ear and a moderate loss in the left ear. This would be due to his employment as an equipment cleaner since 1983 to the time he retired in 1996." Dr. Ross diagnosed asymmetrical bilateral very high frequency sensory neural hearing loss unaccompanied by subjective tinnitus.

On August 5, 1996 the Office advised that it accepted appellant's claim for noise induced hearing loss. To claim a schedule award, appellant was directed to submit a Form CA-7, which was subsequently submitted on August 7, 1996.

On September 6, 1996 an Office medical adviser, calculated appellant's percentage of hearing loss as zero percent monaural loss in the left ear and zero percent monaural loss in the right ear, and zero percent binaural loss.

On September 6, 1996 Dr. Schindler, a Board-certified otolaryngologist, reviewed the medical evidence of record and noted that appellant was exposed to hazardous levels of noise in his employment. He opined that appellant has a bilateral high frequency sensorineural hearing loss causally related to noise exposure. Based on the June 28, 1996 audiogram, he calculated appellant's bilateral hearing loss as zero percent in the right ear and zero percent in left ear for a zero percent binaural loss.

In a September 17, 1996 decision, the Office advised appellant that while it was accepted that he did have a permanent partial hearing loss causally related to factors of his federal employment, his hearing loss was not ratable for schedule award purposes under the standards used by the Office in evaluating such conditions.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.¹ 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 determinations is a matter which rests in the sound discretion of the Office.² 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 use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.³

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 hertz cycles per second. 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. 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

¹ 5 U.S.C. § 8107.

² *Daniel 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).

loss.⁴ The Board has concurred in the Office's use of this new standard for evaluating hearing losses for schedule award purposes.⁵

In the instant case, the Office medical adviser applied the Office's standardized procedures to the June 28, 1996 audiogram. The losses at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second were added up and averaged, and the "fence" of 25 decibels was deducted. The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For hearing levels recorded in the left ear of 10, 10, 5, and 25 decibels and in the right ear of 0, 5, 0, and 5 decibels, the above formula yields a nonratable hearing loss. Thus, while the Office has accepted that appellant's employment-related noise exposure caused a bilateral hearing loss, the hearing loss is not sufficient, under the standards set forth in the A.M.A., *Guides*, to entitle appellant to a schedule award.

Accordingly, the September 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 25, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See A.M.A., *Guides* 224 (4th ed. 1993); FECA Program Memorandum No. 272 (issued February 24, 1986).

⁵ *Daniel C. Goings, supra* note 3.