

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS N. FARRIS and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Midland, Tex.

*Docket No. 97-129; Submitted on the Record;
Issued September 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent monaural hearing loss of his right ear for which he was granted a schedule award.

On March 28, 1996 appellant, then a 54-year-old special agent, filed a notice of occupational disease (Form CA-2) claiming hearing loss and tinnitus caused by noise exposure in the course of his federal employment.

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description and noise level test results performed at the employing establishment.

By letter dated May 21, 1996, the Office referred appellant to Dr. Gary Elam, Board-certified in otolaryngology, for an otologic evaluation and audiologic testing. The Office provided Dr. Elam with a statement of accepted facts and copies of all medical reports.

Dr. Elam performed an otologic evaluation of appellant on May 29, 1996 and audiometric testing was conducted on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 10, 15, 15 and 65 decibels; left ear 10, 10, 15 and 65 decibels. In his May 29, 1996 report, Dr. Elam stated that the auditory assessment revealed a "marked to severe" high-frequency hearing loss, and that it impaired appellant's communication skills and understanding in noisy environments. He diagnosed appellant as having a "[N]oise-induced high-frequency neurosensory deafness," and noted that his condition was not correctable by surgical intervention. Dr. Elam stated that appellant had reached maximum medical improvement and recommended that computer-programmable hearing aids be authorized for his use.

An Office medical adviser reviewed Dr. Elam's report and audiometric test results and concluded that appellant had an employment-related sensorineural monaural hearing loss in the

right ear. After applying the Office's current standards for evaluating hearing loss to the results of the May 29, 1996 audiologic tests, the Office medical adviser determined that appellant had a 1.9 percent monaural loss in the right ear and a 0 percent monaural hearing loss in the left ear. The Office medical adviser further recommended that appellant obtain a hearing aid.

On July 12, 1996 the Office granted appellant a schedule award for a two percent loss of hearing in the right ear. The period of the award ran for 1.04 weeks from May 29, 1996, the date of the audiogram performed for Dr. Elam, to June 5, 1996.

The Board finds that appellant has no more than a two percent monaural (right ear) hearing loss for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks' 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 loss of a member shall be determined. The method used in making such a 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 applicable to all claimants."³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the "fence" of 25 decibels is deducted because, 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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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

¹ 5 U.S.C. § 8107.

² *Kenneth E. Leone*, 46 ECAB 133 (1994).

³ *Id.*

⁴ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁵ A.M.A., *Guides* 224 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

The Office medical adviser applied the Office's standardized procedures to the May 29, 1996 audiogram performed for Dr. Elam. Testing for the left ear revealed decibel losses of 10, 10, 15 and 65 respectively. These decibel losses were totaled at 100 and divided by 4 to obtain the average hearing loss at those cycles of 25. The average of 25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the left ear. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 10, 15, 15 and 65 decibels respectively. These decibel losses were totaled at 105 decibels and divided by 4 to obtain the average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels which was multiplied by the established factor 1.5 to compute a 1.9 percent loss of hearing for the right ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a nonrateable loss of hearing in his left ear and a two percent monaural loss of hearing in his right ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Elam's May 29, 1996 report and the accompanying May 29, 1996 audiometric evaluation that Dr. Elam reviewed. This resulted in a calculation of a two percent monaural hearing loss in the right ear. The left ear was not rateable under these standards and, therefore, not compensable.

On appeal, appellant contends that he has ringing in his ears, a condition he raised in his initial claim. However, the Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a rateable permanent loss of hearing.

The A.M.A., *Guides* also allows for an award for tinnitus under disturbances of vestibular function.¹⁰ However, no additional rateable permanent monaural hearing loss above the two percent for which appellant has already received a schedule award has been identified or documented, therefore, there is no medical evidence that tinnitus caused or contributed to a rateable hearing loss other than that for which compensation has already been received. Additionally, since no objective findings of disequilibrium or evidence that appellant cannot perform his usual activities of daily living were presented, appellant has not made a case for an award for tinnitus which causes disturbances of vestibular function.

⁸ *Id.*

⁹ *Supra* note 4.

¹⁰ *See* A.M.A., *Guides* 146.

Appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity.¹¹ However, there is no indication in the record that appellant sustained a loss of wage-earning capacity as a result of his tinnitus.

Because appellant has not demonstrated that his tinnitus caused or contributed to a ratable hearing loss other than that for which he has already been compensated, and because appellant has not established that his tinnitus has caused vestibular function disturbances or a loss of wage-earning capacity, there is no basis for paying appellant a schedule award for tinnitus.

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is affirmed.

Dated, Washington, D.C.
September 18, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Charles H. Potter*, 39 ECAB 645 (1988).