

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL M. SAWKO and NATIONAL AERONAUTICS SPACE
ADMINISTRATION, AMES RESEARCH CENTER, Moffet Field, Calif.

*Docket No. 97-2110; Submitted on the Record;
Issued April 28, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable hearing loss while in the performance of duty.

In his March 1, 1996 report, Dr. George H. Fish, a Board-certified otolaryngologist and referral physician for the Office of Workers' Compensation Programs, stated that appellant had objective evidence of a bilateral sensorineural hearing loss "that is most likely caused by cumulative loud noise exposure at his work at NASA [National Aeronautics Space Administration]." Dr. Fish noted that appellant had normal hearing at the beginning of his employment in 1966 as evidenced by a preemployment audiogram. He stated that he could not explain the reason appellant's hearing had seemingly deteriorated so much from appellant's retirement in 1993 to 1996, but that his audiometric responses seemed reliable and "in the absence of any other explanation it must be assumed it is related to his noise exposure at NASA." An audiogram obtained on February 6, 1996 revealed pure tone air conduction thresholds of 30, 30, 40 and 50 decibels in the right ear at frequencies of 500, 1000, 2000 and 3000 cycles per second, and thresholds of 30, 25, 50 and 55 decibels in the left. According to the procedure set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) at page 225, these thresholds represent an impairment of 18.8 percent in the right ear and 22.5 percent in the left, or a binaural loss of 19.4 percent, as Dr. Fish reported.

The Office referred the case to Dr. David N. Schindler, a Board-certified otolaryngologist acting as a consultant. In a report dated April 8, 1996, Dr. Schindler stated: "After reviewing the records, I submit that the condition found in the examination of February 6, 1996 was aggravated by the conditions of federal employment. The diagnosis is bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss of noise exposure." Dr. Schindler stated that there appeared to be a precipitous drop in hearing between October 28, 1993 and the audiogram performed by Dr. Fish. He recommended an independent examination and audiogram to clarify the discrepancy.

In a report dated September 3, 1996, Dr. Schindler stated: "After reviewing the records, I submit that the condition found in the examination of October 28, 1993 and February 6, 1996 was aggravated by the conditions of federal employment." For schedule award purposes, however, Dr. Schindler used the audiogram of October 28, 1993 because it was consistent with the annual audiograms performed during the last four years of appellant's working career and because it most approximated appellant's date of retirement. This audiogram showed thresholds of 10, 5, 15 and 30 decibels in the right ear and 10, 5, 20 and 40 in the left, representing a hearing loss of 0 percent.

In a decision dated September 20, 1996, the Office advised appellant that his bilateral hearing loss was nonratable.

The Board finds that this case is not in posture for a determination of whether appellant sustained a ratable hearing loss while in the performance of duty. Further development of the medical evidence is required.

The Office obtained three medical opinions in this case, one from Dr. Fish, a referral physician, and two from Dr. Schindler, a consultant. Not only did these physicians attribute appellant's hearing loss to federal employment, but in each report the physician specifically found that the hearing loss demonstrated by the February 6, 1996 audiogram was related to federal employment. The February 6, 1996 audiogram revealed a ratable loss of hearing.

Nonetheless, in his second report Dr. Schindler selected the October 28, 1993 audiogram for schedule award purposes. He gave reasons for selecting this audiogram,¹ but he did not reconcile this selection with his consistent opinion that the condition found in the examination of February 6, 1996 was aggravated by the conditions of federal employment. Further, in his first report Dr. Schindler recommended an independent examination and audiogram to clarify the discrepancy between the audiograms of October 28, 1993 and February 6, 1996. That discrepancy remains unresolved.

In light of the unanimously reported opinion that the condition found in the examination of February 6, 1996 was related to noise exposure in appellant's federal employment, and in light of the unexplained discrepancy between the audiograms of October 28, 1993 and February 6, 1996, the Board will set aside the Office's September 20, 1996 decision and remand the case for further development of the medical evidence. After such further development as may be necessary to clarify these matters, the Office shall issue an appropriate final decision on appellant's entitlement to schedule compensation.

¹ See *John C. Messick*, 25 ECAB 333 (1974) (when several audiograms are in the case record and all are made within approximately two years of one another and are submitted by more than one physician, the Office should give an explanation for selecting one audiogram over the others).

The September 20, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
April 28, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member