

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLEN R. COPELAND and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, Salt Lake City, Utah

*Docket No. 97-2422; Submitted on the Record;  
Issued April 16, 1999*

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DECISION and ORDER

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

The issue is whether appellant has established that he has greater than a 21 percent permanent hearing loss of the left ear, for which he received a schedule award.

On September 3, 1996 appellant, a 54-year-old special agent, filed a Form CA-2 claim for benefits based on additional hearing loss. Appellant had been awarded benefits in 1986 for a 21 percent permanent hearing loss of the left ear, for which he received a schedule award. In a statement dated September 3, 1996, appellant stated that he first became aware that he had sustained an additional hearing loss and that it was caused by his employment during an examination on October 9, 1992. Appellant stated that he underwent another examination on September 3, 1995, during which he was advised again that his hearing had deteriorated.

In an October 4, 1996 letter, the Office of Workers' Compensation Programs informed appellant that he had to submit additional information in support of his hearing loss claim. The Office requested that he provide his employment history and to describe whether he had been exposed to loud noise at any of his previous jobs, and to describe the source of any such noise. The Office requested that appellant indicate whether he was still exposed to hazardous noise at work, and if so, to provide the most recent date of exposure. The Office also requested that appellant provide a medical history of all previous ear or hearing problems and to include a medical report from the examining physician.

In a letter to the employing establishment dated October 4, 1996, the Office requested information regarding appellant's claim. The Office requested that the employer provide locations of job sites where exposure allegedly occurred, sources of exposure to noise, the decibel and frequency level for each job site, and the periods in which appellant was exposed to noise. The Office further requested the employer to describe the type of ear protection, if any, provided to appellant. Lastly, the Office requested that the employer provide a copy of all medical examinations pertaining to appellant's hearing or ear problems, including all audiograms.

By letters dated February 5, 1997, the Office referred appellant and a statement of accepted facts to Dr. Leland Johnson, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the March 25, 1997 audiogram for Dr. Johnson noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 20, 20, 25 and 60 decibels: left ear -- 40, 35, 40 and 65 decibels.

In a Form CA-1332 dated March 25, 1997, Dr. Johnson reviewed an audiogram taken on his behalf and conceded that workplace exposure was sufficient in intensity and duration to have caused the hearing loss indicated by the test. Dr. Johnson stated, however, that there was no change in the left-sided hearing loss since the most recent audiogram dated June 20, 1985, and that appellant showed no increased hearing loss since his award of compensation in 1986. Dr. Johnson stated that “the asymmetry in the high frequency hearing loss in the left ear has been present and essentially unchanged since 1982, [although] the asymmetry would warrant obtaining a screening MRI [magnetic resonance imaging] scan to rule out the possibility of a left acoustic neuroma.”

In a follow-up report dated May 29, 1997, Dr. Johnson stated that appellant had undergone an MRI, which showed no evidence of an acoustic neuroma.

By decision dated June 30, 1997, the Office denied appellant’s claim for additional compensation due to increased hearing loss, finding that, based on Dr. Johnson’s opinion, he failed to establish that he had sustained an injury caused by factors of employment.

The Board finds that the case is not in posture for a decision.

The schedule award provisions of the Federal Employees’ Compensation Act provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.<sup>1</sup> 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.<sup>2</sup> For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.<sup>3</sup>

Under the Guides, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>3</sup> See *Luis Chapa, Jr.*, 41 ECAB 159, 167 (1989).

below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>4</sup> Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural 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 binaural hearing loss.<sup>5</sup>

In this case, the case was not referred to an Office medical adviser to apply the Office's standardized procedures to the March 25, 1997 audiogram performed for Dr. Johnson, who did not calculate a specific hearing loss or make a specific, numerical comparison with appellant's 1985 audiogram, on which appellant's award was based. According to the Office's standardized procedures, there appears to be an additional hearing loss in the left ear and a ratable loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 40, 30, 40 and 65 respectively. These decibels amounted to 175, which, when divided by 4, obtains an average hearing loss at those cycles of 43.75 decibels. The average of 43.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above) equals 18.75, which when multiplied by the established factor of 1.5 amounts to a 27.375 percent loss in the left ear.

Accordingly, pursuant to the Office's standardized procedures, appellant appears to have a greater hearing loss in his left ear and a hearing loss in his right ear. The Board therefore finds that Dr. Johnson's opinion is not sufficiently rationalized, as he has not clarified or elaborated the specific background upon which he based his opinion. Accordingly, the case is hereby remanded for further development. On remand the Office will prepare a new statement of accepted facts which contains the June 20, 1985 audiogram on which the 1986 award was based, and refer appellant to a new Board-certified otolaryngologist for an audiologic and otologic evaluation of appellant to determine the extent of hearing loss. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

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<sup>4</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment*, p. 166 (3d ed. 1988).

<sup>5</sup> *Id.*; see also *Danniel C. Goings*, *supra* note 2.

The Office of Workers' Compensation Programs' decision of June 30, 1997 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
April 16, 1999

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member