

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARLAN D. HAMMRICH and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 98-106; Submitted on the Record;
Issued August 11, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a two percent permanent impairment for hearing loss for which he had been awarded a schedule award.

On June 3, 1993 appellant, then a 54-year-old production shop planner, filed a claim for compensation alleging that he had sustained a hearing loss while in the performance of duty.

On February 23, 1994 the Office of Workers' Compensation Programs referred appellant and a copy of his medical records to Dr. David J. Kessler, a second opinion physician Board-certified in otolaryngology, for an examination and recommendation regarding whether appellant had sustained a work-related hearing loss.

In a medical report dated March 29, 1994, Dr. Kessler stated that, upon physical examination, appellant's ears were completely normal. Based on audiometric testing, he stated appellant had moderate bilateral sensorineural hearing loss. He noted that prior audiogram tests revealed "some minimal tendency toward high-frequency hearing loss when (appellant) started back at the [employing establishment] 1978 but this (has) clearly progressively worsened over the last 15 years." Dr. Kessler stated that appellant had sustained "moderate sensorineural hearing loss, secondary to his chronic noise exposure."

In a medical report dated April 7, 1994, Dr. Donald M. Harvey, an Office audiology consultant, opined that Dr. Kessler's audiological examination was unsatisfactory because the statement of accepted facts was incomplete, the audiogram did not look valid and "the speech reception threshold and pure tones (averages) were not in good agreement." He also noted that appellant's prior audiograms were in wide fluctuation but that Dr. Kessler did not appear to take these fluctuations into account. Dr. Harvey recommended that the Office request a supplemental report from Dr. Kessler or refer appellant to another specialist.

On November 8, 1995 the employing establishment submitted a report to the Office, which estimated appellant's time spent between the shop and office areas and the sound range levels of the shop area from September 1974 to June 1995. The employing establishment noted that appellant spent about 20 percent of his time in the shop area with continuous/intermittent noise from December 1986 to June 1995.

On June 5, 1996 appellant filed a claim for a schedule award alleging that his hearing loss was caused by factors of federal employment.

In a April 3, 1997 memorandum to the file, the claims examiner noted that it had twice requested that the employing establishment differentiate appellant's time spent in the shop area and time spent in the office area, but that the employing establishment submitted undifferentiated responses. The claims examiner then noted that the claim should be further developed with the employing establishment's undifferentiated report as the basis for appellant's noise exposure.

On May 1, 1997 the Office referred appellant to Dr. Steven A. Habener, a second opinion physician Board-certified in otolaryngology, for an opinion regarding appellant's claim of a work-related hearing loss. The Office included a statement of accepted facts which included the employing establishment's November 8, 1995 estimates of noise levels to which appellant was exposed from September 1974 to June 1995.

In a May 12, 1997 medical report, Dr. Habener stated that he had examined appellant on that date. He reported audiogram results noting that appellant had bilateral sensorineural and symmetrical hearing loss involving frequencies between 500 and 4,000 hertz (Hz). Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 30, 25, 15 and 35 decibels; left ear 25, 25, 30 and 30 decibels.

On May 28, 1997 Dr. Harvey reviewed Dr. Habener's report and audiometric test results and concluded that appellant had a sensorineural binaural hearing loss. After applying the Office's current standards for evaluating hearing loss to the results of the May 12, 1997 audiology tests, Dr. Harvey determined that appellant had a 1.88 percent monaural loss in the right ear, a 3.75 percent monaural hearing loss in the left ear and a 2 percent binaural hearing loss.

On July 1, 1997 the Office granted appellant a schedule award for a two percent binaural hearing loss. The period of the award ran for 1.04 weeks from May 12 to June 8, 1997. The Office on September 23, 1997 issued a nonmerit denial of appellant's July 12, 1997 request for reconsideration.¹

The Board finds that appellant has no more than a two percent binaural 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

¹ Appellant did not submit any additional medical evidence, rather he contended that his hearing could worsen prior to his retirement from federal services.

that are listed in the schedule.² 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.³ 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.”⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵ 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.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

The Office consulting audiologist applied the Office’s standardized procedures to the May 12, 1997 audiogram performed for Dr. Habener. Testing for the right ear revealed decibel losses of 30, 25, 15 and 35 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss at those cycles of 26.25. 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 for the right ear, which was multiplied by the established factor 1.5 to compute an 1.88 percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 25, 25, 30 and 30 decibels respectively. These decibel losses were totaled at 110 decibels and divided by 4 to obtain the average hearing loss at those cycles of 27.50 decibels. The average of 27.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 2.50 decibels which was multiplied by the established factor 1.5 to compute a 3.75 percent loss of hearing for the left ear.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ *Id.*

⁵ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁶ A.M.A., *Guides* 224-25 (fourth edition, 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

Accordingly, pursuant to the Office's standardized procedures, the Office properly determined that appellant had a two percent binaural hearing loss.

The Board finds that the Office consulting audiologist applied the proper standards to the findings stated in Dr. Habener's May 12, 1997 report and the accompanying May 12, 1997 audiometric evaluation that Dr. Habener reviewed. This resulted in a calculation of a two percent binaural hearing loss.

With respect to appellant's additional contention on appeal that his hearing may worsen in the future which will create a greater impairment, the Board notes that a schedule award cannot be made on the basis of a possibility that the extent of an impairment will increase in the future. If at some later date a medical examination indicates that appellant's condition has worsened, a claim for an amended schedule award can be made to cover any additional impairment.¹¹

The decisions of the Office of Workers' Compensation Programs dated September 23 and July 1, 1997 are affirmed.

Dated, Washington, D.C.
August 11, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ *Michael C. Norman*, 42 ECAB 768 (1991).