

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD LEE LLOYD and ARCHITECT OF THE CAPITOL,
Washington, DC

*Docket No. 98-834; Submitted on the Record;
Issued December 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant had more than a six percent loss of hearing in his right ear for which he received a schedule award; and (2) whether appellant has sustained a compensable loss of hearing in his left ear causally related to factors of his federal employment.

On November 1, 1996 appellant, then a 54-year-old wood craftsman and on-site assistant foreman, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a binaural (both ears) hearing loss as a result of his federal employment.

Submitted with the claim was an attending physician's report by Dr. E. Chamberson, an otolaryngologist, dated April 19, 1996, which indicated binaural noise-induced (mid-to-high frequency) sensorineural hearing loss resulting from exposure to noise at work and recommended hearing aids. Also submitted was an audiogram from the Mendelson Group, prepared for Dr. Chamberson, which indicated testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed losses in the right ear of 20, 15, 20 and 60 decibels (dBs) respectively, and in the left ear losses of 20, 15, 15 and 50 dBs respectively.

In response to a January 16, 1997 request from the Office of Workers' Compensation Programs for further information, appellant resubmitted the previous medical evidence.

On February 27, 1997 the employing establishment submitted a statement as to the noise level appellant was exposed, appellant's personal qualifications statement and a position description for appellant's job at the employing establishment.

On March 20, 1997 the Office referred appellant to Dr. Norman Barr, a Board-certified otolaryngologist, for audiologic and otologic evaluations. On July 15, 1997 Dr. Barr found that appellant had a bilateral neurosensory, high frequency, noise-induced hearing loss that was consistent with loud noise-type exposure in the past. The attached audiological record dated

April 2, 1997 indicated right ear frequency levels at 500, 1,000, 2,000 and 3,000 per second revealed decibel losses of 15, 10, 20 and 70 respectively. Testing of the left ear at the frequency levels at 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 15 and 45.

An Office medical adviser reviewed Dr. Barr's April 2, 1997 audiogram and applied the Office's standardized procedure to calculate an impairment rating of 5.62 percent monaural loss of hearing in appellant's right ear and a nonratable loss of hearing in appellant's left ear.

By letter dated August 4, 1997, the Office informed appellant that if he wished to file for a schedule award for the 5.62 percent impairment of the right ear, he must file a Form CA-7 -- initial claim for compensation. Appellant filed the claim on September 17, 1997.

By letter dated August 5, 1997, the Office accepted appellant as having a "binaural work-related none-induced hearing loss."

By an award of compensation dated October 2, 1997, the Office granted appellant a schedule award for a six percent loss of hearing in his right ear. In a separate decision of the same date, the Office denied appellant's claim for a schedule award for his left ear hearing loss on the grounds that the hearing loss in his left ear was not severe enough to be considered ratable. However, the Office noted that appellant was entitled to medical benefits for an injury to the left ear as well, and noted that appellant should contact the Office for further information regarding hearing aids.

The Board finds that appellant has no more than a six percent loss of hearing in his right ear for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss of the use of the members of the body 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 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 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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107.

³ *James A. England*, 47 ECAB 115, 117 (1995).

⁴ *Id.*

The Office evaluates hearing losses in accordance with the standard set forth in the A.M.A., *Guides*⁵ and the Board has concurred in the use of this standard.⁶ Under this standard, the decibel (dB) losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hz are added, then divided by 4 to arrive at the average. From this average, the “fence” of 25 dBs is deducted since as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the percentage of binaural hearing loss.⁷

The Office medical adviser applied the Office’s standardized procedures to the April 2, 1997 audiogram obtained by Dr. Barr, which was accompanied by a July 15, 1997 report revealing that appellant sustained a bilateral neurosensory high frequency loss of hearing, worse in the right ear, which was consistent with his exposure to noise. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed dBs losses of 15, 10, 20 and 70. The Office medical adviser totaled these losses at 115 dBs and divided by 4 to obtain the average hearing loss at those cycles of 28.75 dBs. He then reduced the average of 28.75 dBs by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 3.75 which he multiplied by the established factor of 1.5 to compute a 5.62 loss of hearing for the right ear, which was rounded out to a 6 percent monaural, right ear, loss of hearing.⁸ Accordingly, the Office properly granted appellant a schedule award for a six percent loss of hearing for the right ear.

The Board further finds that appellant has not sustained a compensable loss of hearing in his left ear causally related to factors of his federal employment.

As was noted above, the Office medical adviser applied the Office’s standardized procedures to the April 2, 1997 audiogram obtained by Dr. Barr. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed dB losses of 10, 15, 15, 45 and 85. The Office medical adviser totaled these losses at 100 dBs and divided by 4 to obtain the average hearing loss at those cycles of 25 dBs. He then reduced the average of 25 by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 0 which he multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, the Office properly denied appellant’s claim for compensable hearing loss in the left ear as any hearing loss was not serious enough to be considered ratable for purposes of entitlement to a

⁵ American Medical Association, *Guides to the Evaluation of Permanent Impairment* 224 (4th ed. 1993).

⁶ James A. England, *supra* note 3 at 117; *see also* Daniel C. Goings, 37 ECAB 781, 783 (1986).

⁷ *See* FECA Program Memorandum No. 272 (issued February 24, 1986); *see also* A.M.A., *Guides*, *supra* note 5, 166-67.

⁸ FECA Program Memorandum No. 49 (issued May 1, 1967); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

schedule award under the Act.⁹ However, as the Office properly noted, appellant is entitled to medical benefits.

The decisions of the Office of Workers' Compensation Programs dated October 2 and August 5, 1997 are hereby affirmed.

Dated, Washington, D.C.
December 6, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ *Royce L. Chute*, 36 ECAB 202 (1984).