

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KELVIN K. HILL and DEFENSE LOGISTICS AGENCY,
DEFENSE DISTRIBUTION DEPOT, San Diego, Calif.

*Docket No. 97-1617; Submitted on the Record;
Issued February 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has a ratable hearing loss for which he would receive a schedule award.

On July 3, 1996 appellant, then a 42-year-old material handler, filed a claim for a hearing loss.

By letter dated March 22, 1993, the Office of Workers' Compensation Programs informed appellant that he needed to submit additional information in support of his hearing loss claim. The Office requested that appellant provide his employment history and describe whether he was still exposed to hazardous noise at work and whether had been treated for previous hearing or ear problems, and to provide a medical report and audiograms relating to prior hearing conditions. Appellant alleged he was exposed to hazardous noise from 1985 to 1996 and that he wore inadequate ear protection from 1992.

The Office referred appellant to Dr. Jeffrey P. Harris, a Board-certified otolaryngologist, together with a statement of accepted facts and the case record, for an examination. In an October 15, 1996 report, Dr. Harris stated that, on that day, he compared appellant's 1993 and 1996 audiograms. Dr. Harris noted that the 1993 audiogram revealed a high frequency mixed hearing loss and that the 1996 audiogram revealed no significant change. He noted that the results were confirmed by an audiogram specialist and concluded that appellant had asymptomatic hearing loss in the left ear and that the sensorineural component was likely secondary to prior history of noise trauma. Dr. Harris did not recommend hearing aids but recommended that appellant avoid any further loud noise.

In a January 15, 1997 memorandum, an Office medical adviser reviewed Dr. Harris' report and audiogram results. He noted that the earliest audiogram of record was dated February 28, 1983 which revealed a left-sided high frequency hearing loss. The Office medical adviser indicated that Dr. Harris' audiogram showed hearing levels of 10, 5, 5 and 15 decibels in

the right ear and 10, 10, 20 and 50 decibels in the left ear at 500, 1,000, 2,000 and 3,000 hertz respectively. The Office medical adviser applied the Office standards for hearing loss to Dr. Harris' results and concluded that appellant had a zero percent monaural loss in the right and left ears.

In a February 4, 1997 decision, the Office accepted appellant's claim for aggravation of bilateral hearing loss, but denied his claim for a schedule award on the grounds that his rated loss did not satisfy the standards set out in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993).

The Board finds that appellant does not have a ratable hearing loss for which he would receive a schedule award.

The compensation schedule of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of a member is to be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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 hearing loss in accordance with the standards contained in the A.M.A., *Guides* using hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added together and averaged, and a "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 sounds under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁴ The binaural hearing loss is determined by first 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. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule compensation purposes.⁵

The Office medical adviser applied the Office's standardized procedures to the independent audiogram. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 10, 5, 5 and 15, respectively. These losses were totaled at 5 decibels and divided by 4 to arrive at an average hearing loss of 8.75 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 393 (1987).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *Augusta M. Buffa*, 12 ECAB 324, 325 (1961).

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

⁵ See *Danniel C. Goings*, *supra* note 2.

equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear.

Testing for the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 10, 10, 20 and 50 decibels respectively. These losses were totaled at 90 decibels and divided by 4 to arrive at an average hearing loss of 22.50 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

The Office medical adviser calculated appellant's binaural hearing loss by using the prescribed formula: multiply zero by five and add zero, which yields zero; divide by six, which yields a zero percent binaural hearing loss.

The Office followed its standardized procedures and correctly calculated appellant's binaural hearing loss at zero percent. Although appellant has a binaural hearing loss, the extent of that loss is not great enough to impair his ability to hear everyday sounds under everyday conditions and is not great enough to entitle him to a schedule award under the Act.

The decision of the Office of Workers' Compensation Programs dated February 4, 1997 is hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member