

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD C. RUSSELL and TENNESSEE VALLEY AUTHORITY,
JOHNSONVILLE FOSSIL PLANT, New Johnsonville, Tenn.

*Docket No. 97-446; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had greater than a 20 percent binaural hearing loss for which he received a schedule award.

On April 29, 1994 appellant, then a 67-year-old retired sheet metal foreman, filed an occupational disease claim alleging that he sustained a hearing loss which he attributed to his federal employment. Appellant's last work-related noise exposure was on April 15, 1988, the date of his retirement.

An audiogram performed on July 2, 1964 revealed the following test results at 500, 1,000, 2,000 and 3,000 cycles per second: 15, 10, 10 and 5 decibels in the right ear, and 15, 10, 40 and 75 decibels in the left ear. The last audiogram performed during appellant's federal employment, dated August 6, 1987, revealed the following: 10, 5, 40 and 70 decibels in the right ear, and 10, 10, 60 and 80 decibels in the left ear.

In a memorandum dated January 20, 1995, an Office of Workers' Compensation Programs medical adviser stated that the August 6, 1987 audiogram showed an increased hearing loss as compared to the July 2, 1964 audiogram.

In a report dated May 22, 1995, Dr. Ronald H. Kirkland, an Board-certified otolaryngologist, stated that he reviewed appellant's audiogram which showed sensorineural hearing loss consistent with noise exposure. Audiometric testing performed on May 22, 1995 revealed the following: 15, 15, 45 and 75 decibels in the right ear, and 10, 10, 60 and 85 decibels in the left ear.

In a report dated June 19, 1995, the Office medical adviser determined that appellant had a 20 percent binaural hearing loss based upon the audiometric testing performed on May 22, 1995 and using the Office's standardized hearing loss procedures and the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a decision dated December 5, 1995, the Office granted appellant a schedule award for 40 weeks based upon a 20 percent binaural hearing loss.

By letter dated March 4, 1996, appellant requested reconsideration of the Office's decision and submitted additional evidence.

In a report dated January 29, 1996, Dr. Edwin B. Emerson, a Board-certified otolaryngologist, provided a history of appellant's condition and stated that an audiogram performed January 17, 1996 showed a bilateral sensorineural hearing loss with an impairment of 45 percent in the right ear and 48.9 percent on the left for a binaural hearing impairment of 45.6 percent. He provided a copy of an audiogram dated January 17, 1996 which revealed the following: 40, 30, 60 and 90 decibels in the right ear, and 35, 30, 70 and 95 decibels in the left ear. The audiologist who performed the testing indicated that the reliability of the testing was "fair." Dr. Emerson stated, "[appellant] has sensorineural hearing some of which certainly could be attributed to noise exposure over many years in the past."

In a report dated August 8, 1996, an Office medical adviser, stated that the values extrapolated from the January 17, 1996 audiogram did compute to a 45.6 binaural hearing loss compared to the 20 percent hearing loss based on the May 22, 1995 audiogram but that it was highly unlikely that sensorineural hearing loss would deteriorate to such a degree in such a relatively short period of time. He noted that noise-induced hearing loss does not deteriorate significantly after removal from hazardous noise and, in fact, there usually was some improvement. The Office medical adviser noted that the audiologist who performed the 1996 audiogram considered the reliability to be only "fair." He stated that there was also poor agreement between the speech reception threshold and the pure tone average which further reduced the reliability of the 1996 study. The Office medical adviser concluded that the reliability of the January 17, 1996 audiogram was open to serious question, and, in any event, did not reflect hearing ability in May 1995 or at the time of appellant's retirement in 1988. He stated that if appellant's hearing had truly worsened it was due to factors other than employment-related noise exposure because, as noted, noise-induced hearing loss does not progress after removal from acoustic trauma.

By decision dated August 16, 1996, the Office denied modification of its December 5, 1995 schedule award decision.

The Board finds that appellant has no more than a 20 percent binaural hearing loss 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 use of members of the body 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

¹ 5 U.S.C. §§ 8101-8193, *see* section 8107.

² 5 U.S.C. § 8107.

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 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 A.M.A., *Guides*.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. 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. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing 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 the binaural hearing loss.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

In the instant case, the Office medical adviser correctly applied the Office’s standardized procedures for determining hearing loss to the audiometric test results obtained for Dr. Kirkland, a Board-certified otolaryngologist, on May 22, 1995 as provided in his May 22, 1995 report. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 45 and 75 decibels, respectively, in the right ear. These decibel losses were totaled at 150 decibels and were divided by 4 to obtain the average hearing loss of 37.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 15.5 which was multiplied by the established factor of 1.5 to compute an 18.75 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 60 and 85 decibels, respectively. These decibel losses were totaled at 165 decibels and were divided by 4 to obtain the average hearing loss of 41.25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 16.25 which was multiplied by the established factor of 1.5 to compute a 24.375 percent hearing loss in the left ear. To compute the binaural hearing loss, the lesser loss in the right ear, 18.75 percent, was multiplied by the established factor of 5, added to the 24.375 percent loss in the left ear and this sum was divided by the established factor of 6 to calculate a 19.6875 percent binaural hearing loss, which was rounded to 20 percent by the Office in granting appellant’s schedule award.

In a report dated January 29, 1996, Dr. Emerson, a Board-certified otolaryngologist, provided an audiogram performed on January 17, 1996 and he determined that appellant had a

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

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

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

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

binaural hearing impairment of 45.6 percent. However, the audiologist who performed the testing indicated that the reliability of the test results was only “fair.” Furthermore, an Office medical adviser reviewed Dr. Emerson’s report and stated that it was highly unlikely that hearing loss would deteriorate to such a degree in such a relatively short time (from May 1995 to January 1996). He also noted that there was poor agreement between the speech reception threshold and the pure tone average which further detracted from the reliability of the 1996 study. Due to these deficiencies in Dr. Emerson’s report, the weight of the medical evidence rests with the report of Dr. Kirkland and the Office properly determined appellant’s hearing impairment based upon Dr. Kirkland’s May 22, 1995 report.

The August 16, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 14, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member