

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERTRAN O. FOWBLE and DEPARTMENT OF THE AIR FORCE,
AIR TRAINING COMMAND, ALTUS AIR FORCE BASE, Okla.

*Docket No. 97-710; Submitted on the Record;
Issued January 7, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has more than a two percent loss of use of hearing (monaural hearing loss in his right ear) for which he received a schedule award.

On December 22, 1995 appellant, then a 52-year-old fire fighter driver/operator, filed a notice of occupational disease claim alleging that he sustained a hearing loss due to exposure to "hazardous noises from shop equipment and during flightline exposure, fire pumper, fire truck, crash truck, K-12 rescue saw, generator to power jaws of life/ram, air compressor and bench grinder," from December 1973 to the present. The record shows that appellant has submitted various documents including audiological test results dating as far back as 1973 to 1996 and shows that appellant was exposed to noise levels of up to 114 decibels, 8 hours a day, for 5 days a week.

In a letter dated February 8, 1996, the Office of Workers' Compensation Programs referred appellant, together with a statement of accepted facts, for audiologic and otologic evaluation by Dr. Alan Aycock, a Board-certified otolaryngologist. In a March 12, 1996 report, he stated that appellant had a history of exposure to loud noise in his employment and indicated that he had reviewed the audiograms of record and the test results of the audiogram which immediately followed appellant's evaluation. This audiogram resulted in a seven percent binaural hearing loss in both ears.

Upon review of the audiogram from Dr. Aycock, the District medical adviser noted that the attached audiogram failed to comply with the Office's requirements by not providing a calibration date of the instrument, a date of the audiogram and the name and credentials of the audiologist who performed the audiogram. Therefore, in a letter dated June 4, 1996, the Office referred appellant for audiometric testing by audiologist, Travis G. Ortega. This audiometric testing was completed by Mr. Ortega, on June 10, 1996 at 1:30 p.m., with the calibration date of

the instrument as August 22, 1995.¹ This audiogram resulted in a two percent monaural hearing loss for the right ear.

The District medical adviser, after reviewing the March 12, 1996 audiologic and otologic evaluation by Dr. Aycock; the June 10, 1996 verification of audiometric testing from audiologist, Mr. Ortega; together with the statement of accepted facts and the medical record, found the audiometric testing performed by Mr. Ortega on June 10, 1996 to be the most reliable hearing examination results. The March 12, 1996 audiometric testing from Dr. Aycock was disregarded by the District medical adviser as it failed to show a calibration date of the instrument, a date of the audiogram, and the name and credentials of the audiologist who performed the audiogram. The District medical adviser then applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to the June 10, 1996 audiogram to determine that appellant had a two percent monaural hearing loss of the right ear.

In a decision dated September 25, 1996, the Office granted appellant a two percent schedule award for loss of use of hearing (a monaural hearing loss of the right ear) due to exposure to hazardous noise levels occurring in the performance of his federal employment.

The Board finds that appellant has not established that he has more than a two percent monaural loss of hearing in the right ear for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.³ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁴

The Office evaluates hearing losses in accordance with the standard set forth in the A.M.A., *Guides* (4th ed. 1993) and the Board has concurred in the use of this standard.⁵ In

¹ 5 U.S.C. § 8101(2) states: "physician" include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; see also *Barbara J. Williams*, 40 ECAB 649 (1988).

² 5 U.S.C. § 8107.

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

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

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989). Under the standard, the decibel losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hz (hertz) are added, then divided by four to arrive at the average. From this average, the "fence" of 25 decibels is deducted since, 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 1.5 to arrive at the percentage of monaural hearing loss. To determine the loss for both ears, the loss in each ear is calculated using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss. The total is divided by six to arrive at the binaural loss.

addition to this standard, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office's Procedure Manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.⁶ The Office further advises that a certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the test were conducted met the accreditation standards of the Professional Services Board of the ASHA (ANSI S3.6) (1969) and S.1 (1977), respectively. The calibration standards require daily, monthly, quarterly and annual testing.⁷

In the present case, the Board finds that the Office was correct in disregarding the audiogram test results from Dr. Aycock as it failed to meet the Office's standards by providing a calibration date, a date of the audiogram, and provide the name and credentials of the audiologist who performed the audiogram.⁸

However, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing. In *Rubel R. Gracia*,⁹ the Board pointed out that there was no error by the Office in determining the percentage of appellant's hearing loss based on an audiogram report prepared by an audiologist, since an Office medical adviser, who is a physician, had certified the audiologist's audiogram as being accurate and had then properly determined the percentage of appellant's hearing loss utilizing the approved standardized procedures.¹⁰

⁶ See Federal (FECA) Procedure Manual, Part 4 -- Medical Management, *Hearing Loss*, Chapter 4.300 (May 1991).

⁷ For the complete list of requirements and the specifics of such requirements, see Federal (FECA) Procedure Manual, Chapter 2.0806, Part 2 -- Claims, Paragraph 16c and FECA Tr. No. 81-15 (Exhibit 5 in Part 2 of Chapter 2.806 of the Procedure Manual).

⁸ *Id.*

⁹ 33 ECAB 1171, 1175 (1982).

¹⁰ *Joshua A. Holmes*, 42 ECAB 231 (1990).

The District medical adviser properly certified as accurate, and applied the proper standardized procedure, the audiogram performed by audiologist, Mr. Ortega, on June 2, 1996.¹¹ The Board also finds that the results of this audiometric testing properly showed the extent of appellant's hearing loss to be a two percent monaural hearing loss in the right ear. The results were calculated as follows: The decibel levels for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second frequencies at 0, 0, 55 and 50, respectively, were totaled at 105 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 26.25 decibels. The average of 26.25 decibels was reduced by 25 decibels (the first 25 decibels are discounted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment to hear everyday speech under everyday conditions) to equal 1.25 which was multiplied by the established factor of 1.5 to compute a 1.9 percent, which was rounded up to a 2 percent hearing loss for the right ear. The decibels for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second frequencies, at 0, 0, 45 and 50, respectively, were totaled at 95 and divided by 4 to obtain an average hearing loss at those frequencies of 23.75, which was reduced by the fence of 25 (the first 25 decibels are discounted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment to hear everyday speech under everyday conditions) to arrive at 0 or no ratable loss of hearing in the left ear. The hearing for the left ear was not ratable under these standards and, is therefore, not compensable.

The Board concludes that the District medical adviser properly certified the audiologist's June 10, 1996 audiometric testing results as being accurate, considered it to be the most reliable audiogram of record, applied the approved procedures to this audiogram and granted appellant a schedule award for a two percent monaural hearing loss of the right ear due to his federal employment.¹²

Appellant objects to the award of 1.04 weeks compensation for the hearing loss in the right ear. The Act¹³ provides that for a total, or 100 percent, loss of hearing in one ear, an employee shall receive 52 weeks' compensation.¹⁴ Accordingly, the amount payable for a 2 percent monaural hearing loss would be 2 percent of 52 weeks' or 1.04 weeks of compensation, which is what appellant was awarded. Under the schedule award provisions, appellant is entitled to no more.¹⁵

¹¹ *Id.*

¹² *See supra* note 3.

¹³ 5 U.S.C. §§ 8101-8193.

¹⁴ 5 U.S.C. § 8107(c)(13(a)).

¹⁵ The schedule award commences on the date of "maximum improvement" or the point at which the injury has stabilized and will not improve further; *see Marie J. Born*, 27 ECAB 623 (1976). That determinations based on the medical evidence and the date is usually the date of the medical examination which determined the extent of the hearing loss; *see James L. Thomas*, 31 ECAB 1088(1980). In the instant case, the date was June 10, 1996, the date of the audiologic examination conducted by Mr. Ortega, the results of which were used as the basis of the schedule award.

The decision of the Office of Workers' Compensation Programs dated September 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 7, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member