

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRIS GRUNTS and DEPARTMENT OF THE AIR FORCE,
MILITARY DEPARTMENT OF INDIANA, Indianapolis, IN

*Docket No. 97-2824; Submitted on the Record;
Issued July 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

On December 5, 1996 appellant, then a 54-year-old aerospace ground equipment technician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging a binaural hearing loss sustained in the performance of duty. Appellant indicated that he first became aware of his condition and that his hearing loss was causally related to his federal employment on September 25, 1975. He lost no time from work because of this condition and retired in December 31, 1996.

Appellant submitted in support of his claim, his employment history and personnel records which showed a history of exposure to loud noises with the employing establishment from 1975 to 1996. As an aerospace ground equipment technician, appellant "performed periodic inspections, repairing, servicing, testing and operating ground equipment. No hearing protection during first 2 years of employment. For 4 to 5 hours per day the claimant was exposed to gasoline powered generators and power tools. Delivered equipment to the flight line 1 to 3 hours per day. Ear muffs were worn on flight line and later ear plugs and ear muffs were required." Appellant retired and was last exposed to loud noises on December 31, 1996.

In a decision dated June 25, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for a bilateral noise-induced hearing loss due to loud noise exposures.¹ The Office found, however, that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act. However, appellant was entitled to medical

¹ The Office diagnosed appellant with a moderate high frequency sensorineural "notch," beginning above 2,000 hertz for the left ear and above 3,000 hertz for the right ear.

benefits for the effects of his hearing loss. The Office authorized a hearing aid for appellant's left ear only.²

In the instant case, the Office properly used the May 30, 1997 audiogram performed on behalf of Dr. Sikand, a Board-certified otolaryngologist to whom the Office referred appellant, for an opinion on May 15, 1997.³ Moreover, the Office audiologist correctly applied the Office's standardized procedures to the May 15, 1997 audiogram in determining the extent of appellant's hearing loss.

The schedule award provisions of the Act⁴ and the implementing federal regulations⁵ set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.⁶ However, neither the Act nor the regulations specify the manner in 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.⁷ 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.⁸

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th edition 1993), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then 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.⁹ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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

² Dr. Ashley Sikand, a Board-certified otolaryngologist, stated in her May 30, 1997 report that she would not recommend a hearing aid for appellant at that the present time.

³ By letter dated May 15, 1997, the Office referred appellant to Dr. Sikand for a second opinion; see Federal (FECA) Procedure Manual, Part 3 -- *Medical Requirements for Medical Reports*, Chapter 3.0600.8 (October 1990).

⁴ 5 U.S.C. § 8107 *et seq.*

⁵ 20 C.F.R. § 10.304.

⁶ *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁷ *Id.*

⁸ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁹ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th edition 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

Testing for the right ear at the relevant frequencies revealed decibel losses of 15, 5, 5 and 15 for a total of 40, which was divided by 4 for an average hearing loss of 10 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted as discussed above) to arrive at 0 or no ratable loss of hearing in the right ear.¹² The hearing loss in the right ear was not ratable under these standards and, therefore, not compensable.

Testing for the left ear at the same frequencies revealed decibel losses of 10, 10, 15 and 55 decibels respectively for a total of 90. This figure was divided by 4, for an average hearing loss of 22.5 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted) to arrive at 0 or a nonratable loss of hearing in the left ear.¹³ The hearing loss in the left ear was not ratable under these standards and, therefore, is not compensable.

The decision of the Office of Workers' Compensation Programs dated June 25, 1997 is affirmed.

Dated, Washington, D.C.
July 26, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ FECA Program Memorandum No. 272 (issued February 24, 1986).

¹¹ See *Donald A. Larson and Danniell C. Goings, supra* note 6.

¹² See A.M.A., *Guides* 224 (4th edition 1993).

¹³ *Id.*