

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY J. HENDERSON and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Warner Robins, Ga.

*Docket No. 97-2646; Submitted on the Record;
Issued June 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a ratable hearing loss in the performance of duty on or before May 1, 1995.

On December 17, 1996 appellant then a 36-year-old aircraft mechanic, filed a notice of occupational disease alleging that he had sustained a work-related, binaural high frequency hearing loss in the performance of duty on or before May 1, 1995. Appellant stopped work on January 10, 1997 and did not return. The employing establishment reported that he was last exposed to work factors alleged to have caused his condition in December 1996.

Accompanying the claim, appellant submitted a statement reporting his history of noise exposure at the employing establishment since October 1988. He noted exposure to "noise from gas powered air conditioners, gas powered generators, air power rivet guns and running aircraft engines" both in hangars and on the flight line [describe conditions at workplace]. Appellant reported using earplugs in conjunction with earmuffs.¹

A September 13, 1995 industrial hygiene survey measured rivet guns at up to 125 decibels. A December 15, 1995 industrial hygiene survey noted that a MEP 7 generator was measured at 107.8 decibels, rivet guns at up to 100 decibels, and classified the shop where appellant worked as a hazardous noise area. In a December 18, 1996 investigative memorandum and January 7, 1997 letter, the employing establishment stated that appellant had daily exposure to high noise levels from aircraft engines and shop noise in the workplace. In a January 28, 1997 letter, the employing establishment stated that noise survey records indicated that appellant was exposed to noise levels up to 89 decibels.

¹ Appellant also provided a history of nonoccupational noise exposure as a Marine Corps plane captain from October 1976 to October 1977, as a metal stamper from November 1977 to July 1978, and as an air reserve technician maintaining C-130 aircraft from February 1980 to October 1988.

Also submitted were copies of annual employing establishment audiograms taken from 1989 to 1996, along with employing establishment dispensary chart notes regarding appellant's complaints of fullness in the left ear beginning in 1994. Reports beginning in September 1990 indicated that appellant had a high frequency hearing loss. The audiograms did not indicate that the hearing loss was ratable, for schedule award purposes, under standards used by the Office of Workers' Compensation Programs.

In a May 20, 1997 letter, the Office referred appellant and the case file to Dr. Peter G. Ventura, a Board-certified otolaryngologist, for an examination and opinion on the cause and extent of appellant's hearing loss. The Office also requested that Dr. Ventura have an audiological evaluation of appellant performed.

In a June 2, 1997 report, Ms. Mara Moncrief, an audiologist, acting on behalf of Dr. Ventura, noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 20, 0, 10, and 35 decibels; left ear -- 15, 15, 20 and 45 decibels.

In a June 2, 1997 report, Dr. Ventura noted the history of appellant's workplace noise exposure and stated findings on examination. He reported reviewing appellant's audiogram and he listed an impression of bilateral high frequency sensorineural hearing loss. Dr. Ventura noted that appellant's audiogram showed the characteristic Carhart's notch at 4,000 Hz which is commonly found in noise-induced hearing loss. He concluded, based on the lack of any other known etiology for the hearing loss, that appellant's hearing loss, since working for the employing establishment, was due to workplace noise exposure. Dr. Ventura stated that hearing aids might be of benefit.

In a July 3, 1997 report, an Office medical adviser reviewed Dr. Ventura's report, and Ms. Moncrief's audiogram and, applying the Office's standards for evaluating hearing loss, calculated that appellant's binaural hearing loss was not ratable for schedule award purposes.²

By decision dated July 8, 1997, the Office denied appellant's claim for a schedule award on the grounds that while appellant had a work-related binaural loss of hearing, the hearing loss was not sufficient to warrant a schedule award. The Office found that appellant was entitled to medical benefits for the effects of his hearing loss, including hearing aids.

The Board finds that appellant does not have a ratable hearing loss sustained in the performance of duty.

² The Board notes that in performing the schedule award calculation, the Office medical adviser used the figure of 25 decibels for the right ear at 3,000 Hz, whereas the audiogram noted a deficit of 35 decibels. However, this constitutes harmless error, as even using the 35 decibel figure, the total loss for the right ear would be 75, and the total for a ratable loss would need to be over 100. In this decision and order, the Board will use the correct figure of a 35 decibel loss for the right ear at 3,000 Hz. The Board also notes that in performing the schedule award calculation, the Office medical adviser used the figure of 50 decibels for the left ear at the frequency of 3,000 Hz, whereas the audiogram showed 45 decibels at 3,000 Hz. This also constitutes harmless error, as using the correct figure would have resulted in a total decibel loss under 100.

The schedule award provisions of the Federal Employees' Compensation Act³ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. 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 determinations is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the board has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴

Under the *Guides*, hearing loss is evaluated by determining decibel loss at the following frequency levels: 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁵ The remaining amount is multiplied by 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 Office medical adviser applied the Office's standardized procedures to the June 2, 1997 audiogram performed for Dr. Ventura. Testing for the right ear at the frequency levels of 500 1,000 2,000 and 3,000 Hz revealed decibel losses of 20, 0, 10 and 35. These decibels were totaled at 75 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 18.7 decibels. The average of 18.7 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000 2,000 and 3,000 Hz revealed decibel losses of 15, 15, 20 and 50. These decibels were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

Appellant contends on appeal that he has a ratable binaural loss of hearing. However, the Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Ventura's July 2, 1997 report and the accompanying audiometric evaluation. This resulted in a calculation of a zero percent hearing loss as set forth above. As noted above, the standards

³ 5 U.S.C. § 8107; *see generally* 5 U.S.C. §§ 8101-8193.

⁴ *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁵ A.M.A., *Guides*, p. 224 (4th ed. 1993).

⁶ *Id.*; *see also* *Danniel C. Goings*, 37 ECAB 781, 784 (1986).

applied to appellant's case are the same standards applied to all employees in hearing loss claims under the Act.⁷

The decision of the Office of Workers' Compensation Programs dated July 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 4, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ Appellant remains entitled to appropriate medical benefits for his work-related condition.