U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY L. DICKERSON and DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, Oklahoma City, Okla.

Docket No. 97-1142; Submitted on the Record;
Issued March 18, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provision of the Federal Employees' Compensation Act[1] 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 of Workers' Compensation Programs.[2] 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.[3]

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 ed. 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

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[1] 5 U.S.C. § 8107.

[2] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

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

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.[4] 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 arrive at the amount of the binaural hearing loss.[5] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[6]

The district medical adviser applied the Office's standard procedures to the May 2, 1996 audiogram performed for Dr. James P. Cobb, a Board-certified otolaryngologist, to whom the Office referred appellant.[7] The district medical adviser concurred with Dr. Cobb's assessment that appellant suffered from a noise-induced, high frequency, neurosensory hearing loss bilaterally. Testing for the right ear at the relevant frequencies revealed decibel losses of 5, 5, 20 and 45 respectively. These decibels were totaled at 75 and were divided by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 6.25 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.[8] Testing for the left ear at the relevant frequencies revealed decibel losses of 10, 5, 20 and 55 respectively. These decibels were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 2.5 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.[9] Accordingly, pursuant to the Office's standardized procedures, the district medical adviser properly determined that appellant had a nonratable hearing loss in both ears.

By decision dated July 18, 1996, the Office denied appellant's claim for a schedule award on the grounds that appellant's hearing loss was nonratable under the Office's standardized procedures.

On October 28, 1996 appellant requested reconsideration of the Office's July 18, 1996 decision. In support, appellant submitted a September 10, 1996 report by Dr. Griffith C. Miller, accompanied by a September 10, 1996 audiogram performed by Dr. Miller.

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[4] 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 ed. 1993); *see also Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

[5] FECA Program Memorandum No. 272 (issued February 24, 1986).

[6] *Danniel C. Goings*, *supra* note 2.

[7] The Office had accepted that appellant sustained an employment-related hearing loss in both ears due to noise exposure.

[8] *See* A.M.A., *Guides* 224 (4th ed. 1993).

[9] *Id.*

On November 6, 1996 the Office referred Dr. Miller's report and audiogram to a district medical adviser. In a November 14, 1996 report, the district medical adviser noted that while his audiogram revealed a ratable loss of hearing, it was the only audiogram of record that revealed that result. However, he noted that Dr. Miller's audiogram was not conducted in accordance with the Office's standardized procedures and could not be used for adjudication by the Office, citing the specific reasons why it did not comply with the accepted procedures.

By decision dated November 19, 1996, after a merit review, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.[10]

The Board notes that in the instant case there was some confusion concerning whether appellant was represented in this appeal by attorney James R. Linehan. The Office originally recognized him as appellant's attorney, but subsequently realized that no written authorization for such representation had been received.[11] By letter dated December 4, 1996, the Office, in an attempt to obtain the proper authorization for representation, requested that Mr. Linehan provide such from appellant. He responded by letter dated December 6, 1996, stating that written authorization was served on the Office on July 30, 1996. No copy of the authorization was enclosed with the letter.[12] On December 11, 1996 Mr. Linehan made a request for production of documents. By letter dated December 12, 1996, the Office advised him that no information could be released to him until the Office had written authorization of representation from appellant. The record does not contain a response from Mr. Linehan.

[10] Based on Mr. Linehan's request for reconsideration and submission of new evidence, the Office granted appellant a merit review. Therefore, the Board finds that appellant's case was not harmed by the confusion concerning representation. If appellant has new evidence he wishes to have considered, he may request reconsideration with the Office.

[11] The record indicates that the Office's November 19, 1996 decision was sent to Mr. Linehan and was not returned as undeliverable.

[12] The record does not contain any written authorization of representation from appellant. On appeal, Mr. Linehan made the same contention, but did not provide supporting evidence.

The decisions of the Office of Workers' Compensation Programs dated November 19 and July 18, 1996 are affirmed.[13]

Dated, Washington, D.C.
March 18, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] The Board notes that the Office's July 18, 1996 decision (memorandum portion) erroneously referred to someone other than appellant, but that the facts as stated correctly referred to appellant's case.