

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH B. KORTE and DEPARTMENT OF DEFENSE, NATIONAL IMAGING & MAPPING AGENCY, St. Louis, MO

*Docket No. 98-977; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a compensable hearing loss causally related to factors of his federal employment.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained a compensable hearing loss causally related to factors of his federal employment.

On August 1, 1997 appellant, then a 55-year-old photographer filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his hearing loss was caused or aggravated by his employment on September 20, 1984. Appellant did not stop work. Appellant's claim was accompanied by factual evidence regarding his noise exposure and medical evidence which included employing establishment audiogram results.

By letter dated October 8, 1997, the Office of Workers' Compensation Programs referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Laurence Levine, a Board-certified otolaryngologist, for a second opinion examination. By letter of the same date, the Office advised Dr. Levine of the referral. He submitted an October 24, 1997 medical report revealing that appellant had occupational noise exposure which was responsible for his current hearing loss condition.

An Office medical adviser reviewed Dr. Levine's medical report appellant's medical records and determined that appellant did not have any ratable hearing loss.

By decision dated November 20, 1997, the Office accepted that appellant sustained hearing loss due to his employment-related noise exposure. The Office, however, found the evidence of record insufficient to establish that appellant sustained a hearing loss sufficiently great to be ratable for purposes of entitlement to a schedule award under the Federal Employees' Compensation Act.

The schedule award provisions of the Act¹ 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 of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.² However, as a matter of administrative practice and to insure consistent results to all claimants, the Office has adopted and the Board has approved the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 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 A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.⁵

Dr. Levine conducted an audiogram on October 23, 1997. He noted that testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000, revealed decibel losses of 0, 15, 25 and 25 respectively and that testing of the left ear at the above frequency levels revealed decibel losses of 10, 15, 25 and 35 respectively. Dr. Levine opined that appellant's physical examination was totally normal and that the audiometric evaluation showed no changes since November 1992. He further opined that appellant had occupational noise exposure which was responsible for his current state of audiometric results and recommended that appellant continue with hearing conservation measures.

On November 18, 1997 the Office medical adviser applied the Office's standardized procedures for evaluating hearing loss to the results of Dr. Levine's October 23, 1997 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 0, 15, 25 and 25 respectively. These decibel losses were totaled at 65 and divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal -8.75 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing of the left ear at the same frequency levels revealed decibel losses of 10, 15, 25 and 35 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels to equal -3.75 which was multiplied

¹ See generally 5 U.S.C. §§ 8101-8193.

² Richard Beggs, 29 ECAB 398 (1977); Dannie C. Goings, 37 ECAB 781 (1986).

³ Jimmy B. Newell, 39 ECAB 181 (1987).

⁴ A.M.A., *Guides*, (4th ed. 1993).

⁵ A.M.A., *Guides*, see also Dannie C. Goings, *supra* note 2.

by 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, the Office medical adviser determined that appellant had a zero percent hearing loss of the right ear and a zero percent hearing loss of the left ear. The Board finds that the Office medical adviser properly applied the standards to the October 23, 1997 audiogram in determining that appellant had a zero percent hearing loss in his right and left ears.

Appellant contends on appeal that he is entitled to a schedule award for a binaural hearing loss. As noted above, the method used to determine the percentage of loss of use is a matter that rests in the sound discretion of the Office and the Board has concurred in the Office's adoption of the A.M.A., *Guides* as the standard for evaluating hearing loss for schedule award purposes. Although the record reveals that appellant was exposed to noise while working for the employing establishment and the medical evidence supports that this exposure caused appellant's hearing loss, the extent of appellant's hearing loss in both ears was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁶

The November 20, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
November 3, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Royce L. Chute*, 36 ECAB 202 (1984).