

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNIE P. LITTLE, JR. and TENNESSEE VALLEY AUTHORITY,
WORKERS' COMPENSATION & REHABILITATION, Chattanooga, TN

*Docket No. 98-1069; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent monaural hearing loss in his left ear for which he received a schedule award.

On January 2, 1997 appellant, then a 55-year-old boilermaker, filed a notice of occupational disease (Form CA-2) claiming a bilateral hearing loss and ringing in the ears (tinnitus) caused by noise exposure in the course of his federal employment. By decision dated October 22, 1997, the Office of Workers' Compensation Programs awarded appellant a schedule award for an eight percent monaural hearing loss in the left ear. This determination was based upon the calculation of its medical adviser, which in turn, was made on the basis of the audiogram evaluation dated July 25, 1997, and the undated Form CA-1332 submitted by Dr. Donald R. Richardson, a Board-certified otolaryngologist. The period of the award ran from July 25 to August 23, 1997 and for 4.16 weeks of compensation.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant has no more than an eight percent monaural hearing loss in the left ear for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ 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 discretion of the Office.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

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).

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 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.³ 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.⁴ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁵

In the instant case, the Office medical adviser correctly applied the Office’s standard procedures to the July 25, 1997 audiogram obtained by Dr. Donald R. Richardson, a Board-certified otolaryngologist to whom the Office referred appellant.⁶ Testing for the right ear at the relevant frequencies revealed decibel losses of 15, 15, 20 and 50 for a total of 100, which was divided by 4 for an average hearing loss of 25 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted as discussed above) to arrive at 0 or a nonratable loss of hearing in the right ear.⁷ The hearing loss in the right ear was nonratable under these standards and, is therefore, noncompensable. Testing for the left ear at the same frequencies revealed decibel losses of 15, 15, 30 and 60 decibels respectively for a total of 120. This figure was divided by 4 for an average hearing loss of 30 decibels, reduced by 25 to arrive at 5 decibels, and then multiplied by 1.5 to arrive at a 7.5 percent ratable loss in the left ear, which is rounded to 8 percent.⁸ Accordingly, the Board finds that pursuant to the Office’s standardized procedures, the Office medical adviser properly determined that appellant had a nonratable loss of hearing in his right ear and an eight percent monaural loss of hearing in his left ear.

On appeal, appellant contends that he has ringing in his ears, a condition he raised in his initial claim. However, the Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing.

The A.M.A., *Guides* also allows for an award for tinnitus under disturbances of vestibular function.⁹ However, no additional ratable permanent monaural hearing loss above the eight percent for which appellant has already received a schedule award has been identified or documented, therefore, there is no medical evidence that tinnitus caused or contributed to a

⁴ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁵ *Daniel C. Goings, supra* note 2.

⁶ The Office had accepted that appellant sustained an employment-related bilateral sensorineural hearing loss secondary to noise exposure for a monaural schedule award of eight percent.

⁷ See A.M.A., *Guides* 224 (4th ed. 1993).

⁸ *Id.* The Office rounded the 7.5 percent to 8 percent.

⁹ See A.M.A., *Guides* 146.

ratable hearing loss other than that for which compensation has already been received. Additionally, since no objective findings of disequilibrium or evidence that appellant cannot perform his usual activities of daily living were presented, appellant has not made a case for an award for tinnitus which causes disturbances of vestibular function.

Appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity.¹⁰ However, there is no indication in the record that appellant sustained a loss of wage-earning capacity as a result of his tinnitus.

Because appellant has not demonstrated that his tinnitus caused or contributed to a ratable hearing loss other than that for which he has already been compensated and because appellant has not established that his tinnitus has caused vestibular function disturbances or a loss of wage-earning capacity, there is no basis for paying appellant a schedule award for tinnitus.

The decision of the Office of Workers' Compensation Programs dated October 22, 1997 is affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Charles H. Potter*, 39 ECAB 645 (1988).