

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMMY R. JERNIGAN and TENNESSEE VALLEY AUTHORITY,
PARADISE STEAM PLANT, Drakesboro, KY

*Docket No. 97-2561; Submitted on the Record;
Issued October 1, 1999*

DECISION and ORDER

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

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

On August 26, 1996 appellant, then a 55-year-old retired¹ electrician, filed an occupational disease claim alleging that he sustained a permanent hearing loss, which he attributed to noise exposure at the employing establishment.

In a report dated March 4, 1997, Dr. John D. Loucks, a Board-certified otolaryngologist, related appellant's complaint of having difficulty hearing. Dr. Loucks stated that there was a history of noise exposure when he worked at the employing establishment and appellant stated, that he was frequently exposed to loud noises from turbines, generators, pumps, coal breakers and crushers. He noted that audiometric evaluation showed his hearing to be within normal limits although with a high frequency sensorineural hearing loss at 6,000 cycles per second. Dr. Loucks provided the results of audiometric testing, which revealed that appellant had decibel losses of 15, 15, 15 and 25 upon testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively and decibel losses of 15, 15, 15 and 20 upon testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively.

In an undated memorandum, an Office of Workers' Compensation Programs district medical Director recommended that appellant be referred to an otolaryngologist and audiologist for further evaluation.

By letter dated February 25, 1997, the Office referred appellant to Dr. Hugh M. Sims, III, a Board-certified otolaryngologist, for an audiologic and otologic evaluation.

¹ The record shows that appellant retired on January 23, 1992.

In a report dated June 19, 1997, Dr. Sims provided a history of appellant's noise exposure and stated that appellant had a sensorineural hearing loss with a significant amount of hearing loss secondary to presbycusis with evidence of noise-induced trauma. In answer to the question as to whether workplace exposure had contributed to appellant's hearing loss, he wrote, "Certainly noise exposure over time will have additive effects on long-term hearing function." The results of the audiologic testing performed on June 18, 1997 were included. The findings revealed that appellant had decibel losses of 20, 25, 20 and 35 upon testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively and decibel losses of 20, 15, 20 and 25 upon testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively.

In a report dated July 1, 1997, the district medical Director applied the Office's standardized procedures to this evaluation. As noted above, testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 25, 20 and 35 respectively. These decibel losses were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss of 25 decibels. This average loss was then reduced by 25 decibels to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 15, 20 and 25 respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain the average hearing loss of 20 decibels. This average was then reduced by 25 decibels to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

By decision dated July 8, 1997, the Office denied appellant's claim for a hearing loss on the grounds that the evidence of record failed to establish that he had sustained a permanent hearing loss that was ratable.

The Board finds that appellant did not sustain a ratable hearing loss causally related to factors of his employment.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.² 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 a determination is a matter which rests in the sound discretion of the Office.³ However, as a matter of administrative practice the Board has stated, "For consistent results and to insure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."⁴

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973).

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the “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 speech under everyday conditions. The remaining amount is multiplied by a factor of 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. The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

On July 1, 1997 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Sims, a Board-certified otolaryngologist, on June 18, 1997 and applied the Office’s standardized procedures to this evaluation. As noted above, testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 25, 20 and 35 respectively. These decibel losses were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss of 25 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 15, 20 and 25 respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain the average hearing loss of 20 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. Thus, appellant’s hearing loss is not ratable for schedule award purposes.⁷

⁵ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁶ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

⁷ The Board notes that the audiometric testing performed for Dr. Loucks did not reveal a greater hearing loss than the testing performed for Dr. Sims.

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

Dated, Washington, D.C.
October 1, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member