

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK B. UNDERWOOD and DEPARTMENT OF THE ARMY,
THE ADJUTANT GENERAL OF ALABAMA, Montgomery, AL

*Docket No. 99-1390; Submitted on the Record;
Issued August 23, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for a hearing loss.

On March 31, 1998 appellant, then a 52-year-old personnel management specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained permanent hearing loss while in the performance of duty. He stated that he became aware of his hearing loss on March 31, 1998, the date of his retirement.

In an accompanying statement, appellant listed his history of employment, indicating that he had been exposed to excessive noise for a 26-year period beginning in 1969 until 1995. He noted exposure to power generator noise for three hours per day; high frequency radio transmitters for two hours per day; and rotary and aircraft noise for two hours per week. Appellant indicated that no hearing protection was afforded to him until 1984.

The employing establishment furnished the Office with copies of appellant's job description, employment records, employee medical reports and audiograms performed at the employing establishment. The audiograms were dated from March 3, 1966 to March 23, 1998. The July 19, 1994 and March 23, 1998 audiograms indicated a high frequency hearing loss and recommended audiologic and otologic referral.

In a statement of accepted facts dated November 19, 1998, the Office noted appellant's hazardous noise exposure occurred from 1969 to 1995 whereby appellant worked with power generators, radio transmitters and various aircraft. Appellant was provided with hearing protection in 1984.

By letter dated November 24, 1998, the Office referred appellant to Dr. Robert Peden, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The

Office provided Dr. Peden with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Peden performed an otologic evaluation of appellant on December 17, 1998 and audiometric testing was conducted on his behalf the same day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 10, 10, 15 and 35 decibels; left ear 15, 5, 20 and 35 decibels. Dr. Peden determined that appellant sustained employment-related bilateral mild mid frequency to severe high frequency sensorineural hearing loss.

On January 7, 1999 an Office medical adviser reviewed Dr. Peden's report dated December 17, 1998, and the audiometric test of the same date. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's current standards for evaluating hearing loss to the results of the December 17, 1998 audiology test. The medical adviser determined that appellant has a zero percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear and no binaural hearing loss. The medical adviser recommended that a hearing aid trial be authorized.

In a January 21, 1999 decision, the Office notified appellant that his occupational disease claim had been accepted for binaural hearing loss; however, the Office determined that the hearing loss was not severe enough to be considered ratable for purposes of a schedule award.

The Board finds that the Office properly denied appellant's claim for a schedule award for a hearing loss.

Section 8107(c) of the Federal Employees' Compensation Act¹ specifies 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 of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² For consistent results and to ensure 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.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*, 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 and 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. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the

¹ 5 U.S.C. §§ 8101-8193, § 8107(c)

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

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

worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.⁴ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.⁵ In addition, the Federal Procedure Manual requires that all claims for hearing loss due to its acoustic trauma, requires an opinion from a Board-certified specialist in otolaryngology.⁶ The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA) or state licensure as an audiologist.⁷

An Office medical adviser applied the Office's standardized procedures to the December 17, 1998 audiogram performed for Dr. Peden. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 10, 10, 15 and 35 respectively. These decibels were totaled at 70 and were divided by 4 to obtain an average hearing loss at those cycles of 17.50 decibels. The average of 17.50 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 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 hertz revealed decibels losses of 15, 5, 20 and 35 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 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 hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Peden's December 17, 1998 report and the accompanying audiogram performed on his behalf. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above.⁸

⁴ Page 166 (4th ed. 1994).

⁵ See *Daniel C. Goings*, *supra* note 2.

⁶ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

⁷ Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

⁸ This decision does not affect appellant's entitlement to appropriate medical benefits for the accepted employment injury.

The January 21, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 23, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member