

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY D. GROVE and DEPARTMENT OF THE NAVY,
NAVAL SURFACE WARFARE CENTER, Crane, IN

*Docket No. 99-1747; Submitted on the Record;
Issued August 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 17 percent loss of hearing for which he received a schedule award.

On June 5, 1997 appellant, then a 60-year-old railroad maintenance vehicle operator leader, filed a notice of occupational disease and claim for compensation (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. He stated that he first became aware of his condition on August 15, 1989 and realized that it was also caused or aggravated by his employment on that same date. Appellant did not lose any time from work.

In a September 15, 1997 letter, the Office of Workers' Compensation Programs referred appellant to Dr. William R. Pugh, a Board-certified otolaryngologist, for audiological evaluation and audiometric testing.

An October 2, 1997 audiogram performed for Dr. Pugh at the frequency levels of 500, 1,000, 2,000 and 3,000 cycle per second revealed decibel losses of 35, 25, 50 and 65 for the right ear and 30, 25, 25, 60 for the left ear. In an October 6, 1997 report, Dr. Pugh stated that pure tone air and bone conduction audiometry indicated a mild to moderate bilateral sensorineural hearing loss. Speech reception thresholds of 35 decibels in each ear were in good to fair agreement with pure tone averages of 36 decibels in the right ear and 26 decibels in the left ear. Speech discrimination scores of 96 percent at 65 decibels in the right ear and 100 percent at 65 decibels in the left ear were excellent. Type A (normal) tympanograms were compatible with the absence of middle ear pathology in both ears. Test results were felt to be consistent and reliable. Dr. Pugh stated that appellant had mild to moderate bilateral sensorineural hearing loss and it was likely that his hearing loss was due to damage caused by his excessive noise exposure. He also recommended hearing protection and hearing aids.

In a letter dated October 28, 1997, the Office accepted that appellant's hearing loss was related to his employment. An Office audiologist reviewed appellant's audiogram of October 2,

1997 and applied the Office's standardized procedure to calculate an impairment rating of 17 percent binaural hearing loss.

The Office granted appellant a schedule award for a 17 percent binaural hearing loss on February 5, 1998.

In a letter dated March 5, 1998, appellant requested reconsideration and alleged that he had a greater loss than his schedule award. He supplied a February 5, 1998 report and a February 18, 1998 report from Amy S. Arthur, an audiologist. Appellant also supplied an audiometric record dated February 19, 1998.

On March 12, 1998 the Office forwarded the two reports and audiometric record to the Office audiologist, who in a March 19, 1998 report, noted the February 18, 1998 audiogram while showing that there was a decrease in hearing bilaterally, lacked speech reception thresholds or an accompanying doctor's report.

By decision dated April 8, 1998, the Office denied modification of the February 5, 1998 decision.¹

The Board finds that appellant has no more than a 17 percent binaural loss of hearing for which he received a schedule award.

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 the 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 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."⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *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.⁶ Then the "fence" of 25 decibels is deducted

¹ Appellant submitted additional evidence following the April 8, 1998 decision. However, as this evidence has not been reviewed by the Office in reaching a final decision, the Board may not review for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁴ *Id.*

⁵ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁶ A.M.A., *Guides* 224 (4th ed. 1993).

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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

In this case, the Office audiologist applied the Office's standardized procedures to the October 2, 1997 audiogram obtained by Dr. Pugh, a Board-certified otolaryngologist. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 35, 25, 50 and 60 respectively. These decibel losses were totaled to 170 and divided by 4 to obtain the average hearing loss at those cycles of 42.5. The average of 42.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 17.5 decibels for the right ear, which was multiplied by the established factor 1.5 to compute a percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 30, 25, 25 and 60 decibels respectively. These decibel losses were totaled at 35 decibels and divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The average of 35 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 10 decibels, which was multiplied by the established factor 1.5 to compute a 15 percent loss of hearing for the left ear. The consultant then multiplied the 15 percent loss in the left ear (the ear with the lessor loss) by 5, added it to the 26.25 percent loss in the right ear (the ear with the greater loss) and divided the sum by 6 to calculate appellant's binaural hearing loss at 17 percent. The Office properly granted appellant a schedule award for a binaural hearing loss of 17 percent.¹¹

Following the Office's February 5, 1998 schedule award, appellant requested reconsideration and submitted a report from Ms. Arthur, an audiologist and a copy of a hearing test from Indiana University Hearing Center. The Office properly found that this was insufficient to establish a further hearing loss as the new reports lacked speech reception thresholds, a doctor's report and medical evidence to substantiate a further decrease in hearing. In this case, the evidence is of no probative medical value because an audiologist is not a physician under the Act.¹² The Board has held that an audiogram must be certified by a

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* note 4.

¹¹ It is noted that an error was made in the calculation for the right ear at the 3,000 level; however, the error was inconsequential, as it did not change the percentage loss. There was actually a 65 decibel loss at the 3,000 hertz level. However, applying the Office's standardized formula to the correct amounts still results in a 17 percent binaural hearing loss.

¹² *See Irwin J. Schumacher*, 39 ECAB 798 (1988); 5 U.S.C. § 8101(2).

physician as being accurate before it can be used to determine the percentage of hearing loss.¹³ The Board also notes that the Office has set forth specific requirements for hearing loss cases, which includes speech reception thresholds for each ear.¹⁴

The Board finds that the Office applied the proper standards to the October 2, 1997 audiogram results and properly determined that appellant has sustained a ratable binaural hearing loss of 17 percent.

The April 8, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹³ *Joshua A. Holmes*, 42 ECAB 231 (1990).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical Requirements for Medical Reports, Chapter 3.600.exh.4 (September 1996).