

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICCI R. SHUNK and DEPARTMENT OF THE AIR FORCE,
AIR NATIONAL GUARD, Madison, WI

*Docket No. 99-1939; Submitted on the Record;
Issued August 28, 2000*

DECISION and ORDER

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

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

On September 30, 1998 appellant, then a 40-year-old aircraft engine mechanic, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained a hearing loss in the course of his federal employment. Appellant stated that he first became aware of his illness on September 30, 1998. On the reverse of the form, the employing establishment indicated that appellant had not stopped work. Medical and factual evidence included in the record included test results from periodic audiograms performed by the employing establishment between July 14, 1984 and June 24, 1998 and documents indicating that appellant was exposed to loud noise at work.

By letter dated November 5, 1998, the Office of Workers' Compensation Programs referred appellant to Dr. B. Tucker Woodson, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Woodson performed otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf on December 10, 1998. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear -- 20, 15, 20 and 10 decibels; left ear -- 25, 20, 25 and 15 decibels. The audiogram results noted a calibration date of November 4, 1998.

In his report, Dr. Woodson noted that appellant had evidence of a sensorineural hearing loss, which he opined was related to appellant's occupational history. He also diagnosed daytime tinnitus, which caused no impairment. Finally, Dr. Woodson noted that appellant did suffer from a high frequency hearing loss that was greater on the left ear. Dr. Woodson stated that appellant did not require any further treatment at that time.

The Office accepted the claim for bilateral sensorineural hearing loss. Appellant thereafter filed a claim for a schedule award.

In a report dated April 11, 1999, an Office medical consultant reviewed the medical evidence of record. Applying the Office's standardized guidelines to the December 10, 1998 findings, the Office's medical consultant determined that appellant did not have a ratable hearing loss.

By decision dated May 5, 1999, the Office determined that appellant sustained a hearing loss in the performance of duty but that, under the fourth edition of the American Medical Association (A.M.A.) *Guides to the Evaluation of Permanent Impairment*,¹ appellant's hearing loss was not ratable.

The Board finds that appellant has not sustained a ratable hearing loss causally related to factors of his federal employment.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.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 determination is a matter, which rests in the sound discretion of the Office.³ 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 a uniform standard applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the Office⁵ and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.⁶

Under the A.M.A., *Guides*,⁷ hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. 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 sounds in everyday listening conditions.⁸ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3rd ed. 1988), hereafter A.M.A., *Guides*

² 5 U.S.C. § 8107.

³ See *Arthur E. Anderson*, 43 ECAB 691 (1992).

⁴ See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁵ FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁶ *Danniel C. Goings*, 37 ECAB 781 (1986).

⁷ A.M.A., *Guides* (4th ed. 1993).

⁸ *Id.* at 224.

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 medical evidence of record does not support appellant's claim that he sustained a ratable hearing loss.

The Office medical adviser applied the Office's standardized procedures to the December 10, 1998 audiogram obtained by Dr. Woodson. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 20, 15, 20 and 10 decibels, respectively. These losses were totaled at 65 decibels and were 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 0 percent, which was multiplied by the established factor of 1.5 to compute a 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 losses of 25, 20, 25 and 15 decibels. These losses were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 was then reduced by 25 decibels as discussed above, to equal 0 percent, which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the zero by five to equal zero, which was added to zero. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards, which are applied to all employees in hearing loss claims under the Act¹⁰ to the findings stated in Dr. Woodson's December 10, 1998 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram¹¹ indicating that appellant has a compensable hearing loss. Thus, while appellant clearly has an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards.

⁹ *Id.*; see also *Daniel C. Goings*, *supra* note 6.

¹⁰ See 5 U.S.C. § 8107(13).

¹¹ See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).

The May 5, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member