

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD B. FEIRO and DEPARTMENT OF THE AIR FORCE,
AIR FORCE RESERVES, TRAVIS AIR FORCE BASE, CA

*Docket No. 99-1970; Submitted on the Record;
Issued August 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has a compensable hearing loss under the standards of the Office of Workers' Compensation Programs by which he would be entitled to a schedule award.

On June 6, 1997 appellant, then a 54-year-old jet engine mechanic, filed a claim for a hearing loss. In an October 20, 1997 letter, the Office informed him that it accepted that he had a hearing loss and was entitled to medical benefits. The Office indicated that it was reviewing the evidence to determine his eligibility to a schedule award for hearing loss. In a November 6, 1997 decision, the Office found that, under its standards, his hearing loss was not sufficiently severe to entitle him to a schedule award. In a January 14, 1998 letter, appellant requested reconsideration. In a January 23, 1998 merit decision, the Office denied modification of the November 6, 1997 decision. In an August 18, 1998 letter, he submitted additional medical evidence. In a January 7, 1999 letter, appellant again submitted the evidence and indicated that the August 18, 1998 letter was intended as a request for reconsideration. In a June 3, 1999 merit decision, the Office again denied modification of its prior decisions.

The Board finds that appellant does not have a compensable loss of hearing under the Office's standards which would entitle him to a schedule award.

Section 8107 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 loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that 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

¹ 5 U.S.C. § 8107(c).

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

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 (cps). 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 worse ear. The entire amount is then divided by six to arrive at the 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

The Office medical adviser correctly applied the Office’s standard procedures to the audiogram obtained by Dr. Barry Baron, a Board-certified otolaryngologist. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 15 and 55 respectively for a total of 95 decibels. These losses were divided by 4 for an average hearing loss of 23.75 decibels. The average was reduced by 25 decibels (the first 25 decibels are deducted, as explain above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 10, 10, 20 and 55 decibels respectively for a total of 95 decibels. These losses were divided by 4 for an average hearing loss of 23.75 decibels. The average was reduced by 25 decibels (as explained above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the left ear. The Office medical adviser determined under the Office standards that appellant did not have a binaural hearing loss that would entitle him to a schedule award.

Appellant submitted an August 13, 1998 report and an accompanying audiogram from Dr. John Strout, an otolaryngologist, who stated that appellant had a moderately severe high frequency loss. The Office medical adviser reviewed Dr. Strout’s report and pointed out that the speech reception thresholds and speech discrimination scores were not consistent with the result of the pure tone audiogram. He noted that the pure tone thresholds were approximately 12 decibels worse than the speech reception thresholds for the 3 better frequencies in the speech range. He recommended that Dr. Strout’s audiogram not be used for schedule award purposes because of this discrepancy. The Office medical adviser has provided sufficient rationale for his opinion in finding the August 13, 1998 report and accompanying audiogram should not be used to determine the extent of appellant’s hearing loss under the Office’s standards.⁶ The medical evidence of record, as reviewed by the Office medical adviser, does not establish that appellant has ratable hearing loss for which he would receive a schedule award.

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

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

⁵ *Goings*, *supra* note 2.

⁶ *James M. Hines*, 32 ECAB 1474 (1981).

The decision of the Office of Workers' Compensation Programs dated June 3, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member