

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KEVIN E. BERRY and DEPARTMENT OF THE AIR FORCE,  
AIR NATIONAL GUARD, Milford, MA

*Docket No. 99-877; Submitted on the Record;  
Issued July 21, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On July 25, 1996 appellant, then a 46-year-old retired aerospace ground equipment technician, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that his hearing loss was caused by exposure to hazardous noise levels in the course of his federal employment. He stated that he believed that his hearing loss injury began when he was transferred to the employing establishment's support equipment division in 1971 and he first became aware of a hearing loss on May 23, 1994. Medical and factual records provided by the employing establishment and appellant included test results from periodic audiograms performed by the employing establishment between June 9, 1977 and July 13, 1996 and documents indicating that appellant was exposed to loud noise at work.

By letter dated May 19, 1997, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts, to Dr. Raffi Der Sarkissian, an otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Der Sarkissian examined appellant on May 19, 1997 and audiometric testing on his behalf was performed on May 20, 1997. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (CPS) revealed the following: right ear: 15, 15, 10 and 40 decibels; left ear: 20 at 500 CPS, 15 at 1,000 CPS and 0 at 2,000 CPS. However, for the left ear, no results were listed at 3,000 cycles per second.

In the May 19, 1997 report, Dr. Der Sarkissian noted examination findings and diagnosed a bilateral sensorineural hearing loss with a significant drop at 4,000 CPS. He noted that hearing in appellant's right ear was worse than the hearing in his left ear. Dr. Der Sarkissian further opined that appellant's high frequency hearing loss was consistent with his history of noise exposure and his working environment.

By letter dated October 9, 1997, the claims examiner requested that Dr. Der Sarkissian furnish a complete audiogram for appellant, including the left ear measurement at 3,000 CPS.

The audiogram was repeated on October 17, 1997. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 CPS revealed the following: right ear: 15, 15, 5 and 40 decibels; left ear: 15, 10, 5 and 20 decibels.

On October 28, 1997 and March 27, 1998, an Office consulting audiologist reviewed the medical evidence of record. Applying the Office's standardized guidelines to the October 17, 1997 findings, the Office consulting audiologist determined that appellant did not have a ratable hearing loss.

On May 29, 1998 the Office received a May 27, 1998 medical report from Dr. Steven F. Mucci, a Board-certified otolaryngologist and former associate of Dr. Der Sarkissian, who concluded that appellant's hearing loss was attributable to his noise exposure. He enclosed copies of the May 20 and the October 17, 1997 audiological examinations and the results of a recent audiological examination, performed on May 22, 1998.

By letter decision dated June 24, 1998, the Office determined that appellant sustained a permanent partial hearing loss in the performance of duty, but that, under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant did not have a ratable hearing loss.<sup>1</sup>

On July 6, 1998 appellant requested a review of the written record. By decision dated November 19, 1998, the Office hearing representative affirmed the June 24, 1998 decision.

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The A.M.A., *Guides*

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<sup>1</sup> The record contains a letter from the Office dated April 30, 1998. This letter appears to be a draft of the decision issued by the Office on June 24, 1998.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> See *Arthur E. Anderson*, 43 ECAB 691 (1992).

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

has been adopted by the Office<sup>5</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

Under the A.M.A., *Guides*,<sup>7</sup> hearing loss is evaluated by determining decibel loss at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz). 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.<sup>8</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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.<sup>9</sup>

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

The Office consulting audiologist applied the Office’s standardized procedures to the October 17, 1997 audiogram obtained by Dr. Der Sarkissian. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 15, 15, 5 and 40 decibels respectively. These losses were totaled at 70 decibels 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 loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 15, 10, 5 and 20 decibels respectively. These losses were totaled at 50 decibels and were divided by 4 to obtain the average hearing loss of 12.5 decibels. The average of 12.5 was reduced by 25 decibels, as discussed above, to equal 0, 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 applied the proper standards, which were applied to all employees in hearing loss claims under the Act,<sup>10</sup> to the findings stated in Dr. Der Sarkissian’s May 19, 1997 report and the October 17, 1997 audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram 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.

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

<sup>6</sup> *Daniel C. Goings*, 37 ECAB 781 (1986).

<sup>7</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>8</sup> *Id.* at 224.

<sup>9</sup> *Id.*; see also *Goings*, *supra* note 6.

<sup>10</sup> See 5 U.S.C. § 8107(13).

The November 19, 1998 decision by the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member