

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGG G. VAN DE LOO and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, San Antonio, TX

*Docket No. 99-1227; Submitted on the Record;
Issued July 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had no ratable loss of hearing for which he would receive a schedule award.

On April 26, 1997 appellant, then a 53-year-old special agent, filed a claim for hearing loss and tinnitus. He indicated that he had been the principal firearms instructor for the employing establishment and was constantly exposed to firearms noise. In a January 22, 1998 decision, the Office accepted that appellant's hearing loss was causally related to noise exposure at work but found that his hearing loss was not sufficiently severe to be found ratable under the Office's standards. The Office therefore concluded that he was not entitled to a schedule award for hearing loss. In a February 17, 1998 letter, appellant requested a hearing before an Office hearing representative, contending that the Office had not considered his claim for tinnitus. After a September 24, 1998 hearing, the Office hearing representative, in a December 7, 1998 decision, found that appellant did not have a ratable loss of hearing and therefore was not entitled to a schedule award.

The Board finds that appellant does not have a ratable hearing loss that 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

¹ 5 U.S.C. § 8107(c).

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

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 5 and added to the amount from the worse ear. The entire amount is then divided by 6 to arrive at the percentage of the 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. Edurado Madiedo, Jr., an otolaryngologist. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 0 and 15 respectively for a total of 45 decibels. These losses were divided by 4 for an average hearing loss of 11.25 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 15, 5, 0 and 35 decibels respectively for a total of 55 decibels. These losses were divided by 4 for an average hearing loss of 13.75 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 explained that he chose Dr. Madiedo’s audiogram for determining the extent of appellant’s hearing loss because it was a valid measure of appellant, met all of the Office’s standards, and was part of an otolaryngologist’s evaluation. He therefore provided a valid reason for choosing one audiogram over the other audiograms of record. He properly applied the Office’s standards in determining that appellant had no ratable loss of hearing which would entitle him to a schedule award.

Appellant would be entitled to compensation for any contribution made by tinnitus to his hearing loss if appellant’s hearing loss was ratable.⁶ In this case, however, Dr. Madiedo did not make a diagnosis of tinnitus and did not discuss whether appellant had tinnitus that contributed to the extent of his hearing loss. The Office has not issued a decision on whether appellant is entitled to any medical benefits or compensation for loss of wage-earning capacity arising from tinnitus. As the scope of the jurisdiction of the Board is limited to the final decision of the Office from which an appeal is sought, the Board does not have jurisdiction on this appeal to

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

⁴ p. 166 (3d ed., 1987).

⁵ *Goings*, *supra* note 2.

⁶ *Donald A. Larson*, 41 ECAB 947 (1990).

consider appellant's claim for tinnitus beyond any contribution made by tinnitus to his hearing loss.⁷

The decision of the Office of Workers' Compensation Programs, dated December 7, 1998, is hereby affirmed.

Dated, Washington, D.C.
July 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ See 20 C.F.R § 501.2(c).