

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD S. SHEPAS and DEPARTMENT OF THE TREASURY,
CUSTOMS SERVICE NATIONAL AVIATION CENTER, Oklahoma City, OK

*Docket No. 99-1582; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, 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.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing federal regulations² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office of Workers' Compensation Programs.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), 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. Then a "fence" of 25

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.404 (1999).

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

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.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. 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.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses.⁸

On December 2, 1998 appellant, a 48 year-old law enforcement officer, filed a claim for benefits, alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware he had sustained a hearing loss in October 1994, when he voluntarily removed himself from duty as a firearms instructor and range officer; he had served in this capacity since 1979. Appellant also stated he began experiencing tinnitus in 1997.

By letters dated February 19, 1999, the Office referred appellant and a statement of accepted facts to Dr. Ralph L. Runkle, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the March 8, 1999 audiogram for Dr. Runkle noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 20, 10, 15 and 25 decibels; left ear -- 25, 20, 25 and 25 decibels. In a Form CA-1332 dated March 8, 1999, he reviewed the audiogram and concluded that appellant's hearing test showed a binaural noise-induced sensorineural mild hearing loss due to a history of noise exposure, but found that appellant had a zero percent hearing loss in each ear. Dr. Runkle did not recommend hearing aids.

By letter dated March 19, 1999, the Office accepted a claim for sensorineural hearing loss.

On March 25, 1999 an Office medical adviser reviewed Dr. Runkle's Form CA-1332 and the audiogram taken for him and opined that appellant's hearing loss was nonratable for schedule award purposes under the Office standards for evaluating hearing losses. Hearing aids were not recommended.

In a decision dated March 26, 1999, the Office accepted that appellant had an employment-related hearing loss but determined that appellant's hearing loss was not sufficient to warrant a schedule award. The Office also indicated that hearing aids were not authorized.

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

⁶ See A.M.A., *Guides* p. 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335 (1974); *Terry A. Wethington*, 25 ECAB 247 (1974).

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁸ See *Donald A. Larson and Danniell Goings*, *supra* note 3.

The Office medical adviser applied the Office's standardized procedures to the March 8, 1999 audiogram performed for Dr. Runkle. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed hearing losses of 20, 10, 15 and 25 respectively. These decibels were totaled to 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.50 decibels. The average of 17.50 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 in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 25, 20, 25 and 25 respectively. These decibels were totaled at 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 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 in the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser and the consulting audiologist determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser applied the proper standards to the findings as stated in Dr. Runkle's March 8, 1999 Form CA-1332 and the accompanying March 8, 1999 audiogram performed on his behalf. This resulted in a calculation of a nonratable hearing loss as set forth above. Consequently, the Board finds that the Office properly determined that appellant did not sustain a ratable hearing loss caused by factors of his federal employment.

The March 26, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

July 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member