

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD LEFFEW and TENNESSEE VALLEY AUTHORITY,
KINGSTON STEAM PLANT, Kingston, TN

*Docket No. 99-1629; Submitted on the Record;
Issued July 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained a compensable hearing loss causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a compensable hearing loss causally related to factors of his federal employment.

On May 19, 1998 appellant, then a 48-year-old senior instrument mechanic, filed a claim for an occupational disease (Form CA-2) alleging that he sustained an employment-related hearing loss.

The Office of Workers' Compensation Programs received a May 6, 1998 medical report of Dr. John F. Jernigan, a Board-certified otolaryngologist, indicating that appellant had bilateral sensorineural hearing loss. Dr. Jernigan noted that appellant had a history of industrial hazardous noise exposure which was capable of producing such a loss. The Office received appellant's employment records which included audiogram results.

In response to the Office's July 7, 1998 letter requesting additional factual and medical evidence supportive of his claim, appellant submitted Dr. Jernigan's May 6, 1998 and accompanying audiogram and his audiogram results from the employing establishment which were previously of record. Appellant also submitted additional factual and medical evidence.

By letter dated December 14, 1998, the Office referred appellant along with medical records and a statement of accepted facts to Dr. Frank Little, Jr., a Board-certified otolaryngologist, to determine whether appellant had sustained any employment-related hearing loss.

Dr. Little submitted an undated medical report indicating his finding that appellant had sensorineural hearing loss caused by his employment based on a January 25, 1999 audiogram.

An Office medical adviser reviewed appellant's medical records and determined that appellant had a bilateral sensorineural hearing loss with a zero percent impairment.

By decision dated March 16, 1999, the Office accepted appellant's claim for a hearing loss due to employment-related noise exposure. The Office, however, found that appellant's hearing loss was not ratable under the standards of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The schedule award provisions of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner in which the percentage of 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.² However, as a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the 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 speech in everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural hearing 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.⁵

The report of Dr. Little, a Board-certified otolaryngologist and second opinion physician, noted that audiometric testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz on January 25, 1999 revealed decibel losses of 5, 10, 20 and 25 respectively, and that testing of the left ear at the above frequency levels revealed decibel losses of 15, 10, 25 and 35 respectively. Based on this otologic evaluation of appellant, Dr. Little opined that appellant had sensorineural hearing loss caused by his employment.

The Office medical adviser applied the Office's standardized procedures for evaluating hearing loss to the results of Dr. Little's January 25, 1999 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 5, 10, 20 and 25 respectively. These decibel losses were totaled at 60 and divided by 4 to obtain the average hearing loss at those cycles of 15 decibels. The average of 15 decibels was then reduced by 25

¹ See generally 5 U.S.C. §§ 8101-8193.

² *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 29 ECAB 398 (1977).

³ *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁴ A.M.A., *Guides*, (4th ed. 1993).

⁵ *Id.*; see also *Daniel C. Goings*, *supra* note 2.

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 of the left ear at the same frequency levels revealed decibel losses of 15, 10, 25 and 35 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss at those cycles of 22.25 decibels. The average of 22.25 decibels was then reduced by 25 decibels to equal 0 which was multiplied by 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, the Office medical adviser determined that appellant had a zero percent binaural sensorineural hearing loss. The Board finds that the Office medical adviser properly applied the standards to the January 25, 1999 audiogram in determining that appellant had a zero percent binaural hearing loss.

On appeal, appellant contends that he is entitled to compensation for his hearing loss based on the medical evidence of record. As noted above, the method used to determine the percentage of loss of use is a matter that rests in the sound discretion of the Office and the Board has concurred in the Office's adoption of the A.M.A., *Guides* as the standard for evaluating hearing loss for schedule award purposes. Although the Office found that appellant sustained a hearing loss caused by employment-related noise exposure, the extent of this loss was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁶

The March 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁶ *Royce L. Chute*, 36 ECAB 202 (1984).