

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK FIVELLA and DEPARTMENT OF THE ARMY,
U.S. ARMY GARRISON, Fort Shafter, HI

*Docket No. 98-2410; Submitted on the Record;
Issued March 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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

On February 28, 1998 appellant, then a 42-year-old tools and parts attendant, filed a notice of occupational disease and claim for compensation alleging that he sustained bilateral hearing loss as a result of exposure to hazardous noise in the performance of duty. He noted on his CA-2 claim form that he worked daily with power equipment such as lawn mowers, gas and electric weed wackers, lawn edgers and gas-powered tillers, which were noisy and left him with a continuous ringing in the left ear. Appellant also indicated that he was previously exposed to hazardous noise as an electrician helper at the Pearl Harbor naval shipyard from 1978 through 1988.¹

In support of his claim, appellant submitted medical records, audiograms and an operative report, indicating that he underwent a tympanoplasty for a marginal perforations in the superior posterior quadrant of the margin of the right eardrum.

The Office referred appellant, together with a statement of accepted facts, for audiologic and otologic evaluation by Dr. Hugh N. Hazenfield, on April 20, 1998. In a report dated April 25, 1998, he stated that on physical examination the right tympanic membrane was mildly scarred, but that the ears were otherwise normal with normal mobility of the tympanic membranes on pneumo-otoscopy. Dr. Hazenfield reported audiometric test results and opined that appellant had no demonstrable impairment of the whole person.

An audiogram dated April 20, 1998, which was submitted along with Dr. Hazenfield's April 25, 1998 report, indicated testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed in

¹ Appellant's supervisor verified and the Office of Workers' Compensation Programs accepted that appellant was exposed to excessive noise in his job.

the right ear: losses of 20, 30, 20 and 10 decibels (dBs) respectively; and in the left ear: losses of 25, 25, 10 and 40 dBs respectively.

An Office medical adviser reviewed appellant's April 20, 1998 audiogram and applied the Office's standardized procedures to calculate a nonratable monaural hearing loss in both ears. He reported that appellant had a bilateral high frequency mixed hearing loss aggravated by the conditions of appellant's federal employment, but which was not ratable for the purpose of determining a schedule award.

By decision dated June 15, 1998, the Office advised appellant that his claim for a hearing loss due to his employment-related noise exposure had been accepted. However, the Office found that appellant was not entitled to a schedule award as the medical evidence of record failed to establish that he sustained a ratable hearing loss.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.² 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 determinations is a matter which rests in the sound discretion of the Office.³ However, as a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁴

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 Hz cycles per second. The losses at each frequency are added up and averaged and a "fence" of 25 dBs is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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.⁵ The Board has concurred in the Office's use of this new standard for evaluating hearing losses for schedule award purposes.⁶

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King* 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁵ See A.M.A., *Guides* 224 (4th ed. 1993); FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ *Daniel C. Goings*, *supra* note 3.

In the instant case, the Office medical adviser applied the Office's standardized procedures to the audiogram obtained for Dr. Hazenfield's examination. Testing for the right ear at 500, 1,000, 2,000 and 3,000 Hz revealed hearing threshold levels of 20, 30, 20 and 10 dBs respectively. These losses total 60 for an average of 15 dBs. Reducing this average by 25 dBs (as discussed earlier) leaves a balance of zero decibels, meaning that no impairment is presumed to exist in appellant's ability to hear, with his right ear, everyday sounds under everyday listening conditions.

Testing for the left ear at 500, 1,000, 2,000 and 3,000 Hz revealed hearing threshold levels of 15, 15, 25 and 45 dBs respectively. These losses total 100 for an average of 25 dBs. Reducing this average by 25 dBs (as discussed earlier) leaves a balance of 0 dBs, meaning that no impairment is presumed to exist in appellant's ability to hear, with his left ear, everyday sounds under everyday listening conditions.

Consequently, although it is established in this case, that appellant sustained a hearing loss in both ears as a result of his occupational exposure to hazardous noise, the Office medical adviser properly found that appellant's hearing loss is not severe enough under the protocols of the A.M.A., *Guides* to constitute a compensable impairment. It is for this reason that appellant is not entitled to a schedule award.⁷

⁷ Appellant submitted audiograms dated January 23, 1998, February 7, 1997, February 22, 1996, December 29, 1992, August 14, 1990 and June 2, 1988. The Board notes, however, that none of those tests were certified by a physician, see *Alfred Avelar*, 26 ECAB 426 (1975), nor did they demonstrate a ratable hearing loss under the protocols of the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated June 15, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member