

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUGUSTIN AVILA and DEPARTMENT OF THE AIR FORCE,
AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 00-106; Submitted on the Record;
Issued October 16, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a two percent hearing loss of his left ear for which he was granted a schedule award.

On April 9, 1996 appellant, then a 59-year-old electric integrated system mechanic, filed a notice of occupational disease (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. On May 11, 1999 he filed a claim for a schedule award.¹

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description, his audiogram results from May 5, 1972 to May 2, 1988 and a September 19, 1983 noise-level test result performed at the employing establishment.

By letter dated January 16, 1997, the Office referred appellant to Dr. Felix Portelli, Board-certified in otolaryngology, for otologic evaluation and audiologic testing. The Office provided Dr. Portelli with a statement of accepted facts and copies of all medical reports.

Dr. Portelli performed an otologic evaluation of appellant on February 11, 1997 and audiometric testing was conducted on his behalf on February 4, 1997. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 15, 15, 5 and 25 decibels; left ear 15, 10, 20 and 60 decibels. In his February 11, 1997 report, Dr. Portelli stated that the auditory assessment revealed a bilateral endolymphatic hydrops worse on left than on the right, not job related, and noise-induced bilateral sensorineural hearing loss, very mild on the right, mild on the left, job related. He added that the sensorineural hearing loss was work related due to "the loudness of noise in the workplace, the need for ear defenders and the duration of the exposure. The noise affected the ear with the greater amount of hydrops, *i.e.*, the left ear to a greater degree resulting in the asymmetry noted on testing." He noted that appellant's "loss is far too mild for use of a hearing aid at this time," and rated him with a 1.9 percent hearing loss, left ear and a 0 percent hearing loss, right ear.

¹ Appellant retired effective March 2, 1998.

An Office medical adviser reviewed Dr. Portelli's report and audiometric test results and concluded that appellant had an employment-related sensorineural monaural hearing loss in the left ear. After applying the Office's current standards for evaluating hearing loss to the results of the February 4, 1997 audiologic tests, the Office medical adviser determined that appellant had a two percent monaural loss in the left ear and a zero percent monaural hearing loss in the right ear.

On April 14, 1999 the Office accepted appellant's claim for loss of hearing and, on June 22, 1999 it granted appellant a schedule award for a two percent loss of hearing in the left ear. The period of the award ran for 1.04 weeks from March 2 to 9, 1998.²

The Board finds that appellant has no more than a two percent monaural left ear hearing loss for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks' compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.³ Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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.⁵ However, as a matter of administrative practice, the Board has stated: "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 uniform standards applicable to all claimants."⁶

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁷ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁸ Then, the "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 speech under everyday conditions.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied

² The award modified the Office's initial June 7, 1999 award which incorrectly noted appellant's right ear hearing loss.

³ 5 U.S.C. § 8107.

⁴ *Id.* § 8107 (c)(19).

⁵ *Andrew Arron, Jr.*, 48 ECAB 141 (1996)

⁶ *Id.*

⁷ *Richard Larry Enders*, 48 ECAB 184 (1996).

⁸ A.M.A., *Guides* 224 (4th ed. 1993).

⁹ *Id.*

¹⁰ *Id.*

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.¹¹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹²

The Office medical adviser applied the Office's standardized procedures to the February 4, 1997 audiogram performed for Dr. Portelli. Testing for the left ear revealed decibel losses of 15, 10, 20 and 60 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss at those cycles of 26.25. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels for the left ear. The 1.25 has multiplied 1.5 resulting in a 1.875 loss. The 1.875 loss was properly rounded up to a 2 percent monaural (left ear) loss.¹³ Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 15, 5 and 25 decibels respectively. These decibel losses were totaled at 60 decibels 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 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear.¹⁴ Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a two percent monaural loss of hearing in his left ear and a nonratable loss of hearing in his right ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Portelli's February 11, 1997 report and the accompanying February 4, 1997 audiometric evaluation that Dr. Portelli reviewed. This resulted in a calculation of a two percent monaural hearing loss in the left ear. The right ear was not ratable under these standards and, therefore, not compensable.

On appeal, appellant contends that the Office incorrectly awarded him a schedule award of two percent for the right ear. As noted, the Office on June 22, 1999, modified appellant's award to provide a two percent monaural hearing loss for the left ear.

Appellant also contends that the Office's decision indicated that the date of injury was February 1, 1996 which was the date he advised his supervisor that he intended to file a claim for hearing loss. He also noted that the Office stated that he had hearing loss only "from March 2 to 9, 1998" when he was actually exposed to noise throughout his entire career until he retired. The Office used the date of February 1, 1996 as the date of injury because appellant reported that date as the date of injury in his May 11, 1999 claim for compensation. However, the Board has stated that in cases of occupational disease such as hearing loss the date of injury is the date that appellant was last exposed to the factors of employment that caused his condition if appellant is aware before that time that his condition is related to his employment.¹⁵ In this case, appellant

¹¹ *Id.*

¹² 5 U.S.C § 8107.

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

¹⁴ The Office medical adviser's calculations noted only a right ear total decibel loss of 60 and a 0 percent monaural loss. It did not include the calculation of subtracting 25 from 15 in order to support a 0 percent right ear hearing loss.

¹⁵ See *Charlene B. Fenton*, 36 ECAB 151 (1984).

noted that he was initially aware of his hearing loss and that it was caused by his employment on October 11, 1997, prior to his retirement on March 2, 1998. Appellant's date of injury is the date of his retirement, March 2, 1998. An examination of the record shows that the Office used appellant's pay rate at the time of his retirement to calculate his compensation.¹⁶ Therefore, the statement of February 1, 1996 as the date of injury was harmless error on the part of the Office. Further, the Board notes that the period of the award, March 2 to 9, 1998, represents number of weeks' compensation to be paid in proportion to the percentage loss of use for permanent loss of appellant's hearing.¹⁷ In this case, a 2 percent hearing loss results in 1.04 weeks of compensation calculated from the date of appellant's retirement.

The decision of the Office of Workers' Compensation Programs dated June 22, 1999 is affirmed.

Dated, Washington, DC
October 16, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹⁶ The Board notes that, although the employing establishment stated in appellant's May 11, 1999 claim form that his pay rate as of March 2, 1998 was \$15.45 an hour, its June 4, 1999 schedule award work sheet noted that appellant's pay rate on that date was \$16.32 an hour.

¹⁷ *Supra* note 5.