

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD J. SMITH and DEPARTMENT OF JUSTICE, IMMIGRATION &
NATURALIZATION SERVICE, Laguna Niguel, CA

*Docket No. 99-598; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On April 1, 1998 appellant, then a 49-year-old deputy western regional director and former border patrol agent, filed a notice of occupational disease and claim for compensation (Form CA-2) claiming hearing loss caused by noise exposure in the course of his federal employment. He stated that he first became aware of his condition on October 28, 1997. He realized it was caused or aggravated by his employment on February 15, 1998. Appellant did not lose any time from work.

Accompanying the claim, appellant and the employing establishment submitted statements, personnel records, noise exposure data and audiological test results.

In his statement, appellant indicated his employment history and his history of noise exposure at the employing establishment. The employing establishment indicated that appellant had some loud noise exposure.

By letter dated April 22, 1998, the Office referred appellant, the case record and the statement of accepted facts to Dr. Theodore Mazer, a Board-certified otolaryngologist, for otologic and audiological testing and an opinion as to whether appellant sustained an employment-related hearing loss.

An audiogram was performed by a qualified audiologist on May 5, 1998 for Dr. Mazer.

In a May 12, 1998 medical report, Dr. Mazer noted that on May 5, 1998 he had examined appellant and reviewed appellant's medical reports and the statement of accepted facts. In his diagnosis, Dr. Mazer stated that appellant had sustained minimal high frequency sensorineural hearing loss, bilateral speech tones, and they were of minimal effect on his ability to participate

fully in his assigned duties. He did note that the minimal hearing loss was due to his noise exposures, particularly the firearms exposure during his federal employment.

On June 5, 1998 the Office sent appellant a letter stating that his occupational disease claim was accepted for binaural high frequency sensorineural hearing loss due to noise. On June 26, 1998 appellant submitted a Form CA-7 requesting a schedule award.

Upon review of the audiogram and Dr. Mazer's May 12, 1998 medical report, an Office medical consultant, Dr. David N. Schindler, a Board-certified otolaryngologist, on July 7, 1998, determined that appellant sustained bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss of noise exposure. He determined for schedule award purposes that the permanent functional loss of hearing, using the audiogram dated May 5, 1998, revealed that appellant had a zero percent monaural hearing loss in the right ear and a zero percent monaural loss in the left ear, for a zero percent binaural neurosensory hearing loss. He further advised that hearing aids were not indicated.

In an August 5, 1998 decision, the Office found that appellant sustained bilateral hearing loss due to 11 years of exposure to hazardous noise while employed by the U.S. Border Patrol. However, the Office found that, based upon the medical evidence presented by Dr. Mazer and Dr. Schindler, it was established that appellant had no compensable impairment secondary to his industrial bilateral hearing loss condition and he did not require hearing aids for his hearing loss condition.

The Board finds that appellant has not established that he sustained a ratable hearing loss.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.¹ 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.² 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."³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (c.p.s.), the losses at each frequency are added up and averaged.⁵ Then the "fence" of 25 decibels is deducted because as

¹ 5 U.S.C. § 8107.

² *Kenneth E. Leone*, 46 ECAB 133 (1994).

³ *Id.*

⁴ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁵ A.M.A., *Guides* 224 (4th ed. 1993).

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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

In this case, the consultant reviewed the May 5, 1998 audiogram and noted the following: Testing for the right ear at frequency levels of 500, 1000, 2,000 and 3,000 c.p.s. revealed decibel losses of 10, 10, 5 and 5 respectively. These decibel losses were totaled to 30 and divided by 4 to obtain the average hearing loss at those cycles of 7.5. The average of 7.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear which was multiplied by the established factor 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at frequency levels of 500, 1000, 2,000 and 3,000 c.p.s. revealed decibel losses of 15, 0, 10 and 10 decibels respectively. These decibel losses were totaled at 35 decibels and divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 8.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels which was multiplied by the established factor 1.5 to compute a 0 percent loss of hearing for the left ear. The consultant then multiplied the zero percent loss in the right ear (the ear with the lesser loss) by five, added it to the zero percent loss in the left ear (the ear with the greater loss) and divided the sum by six to calculate the appellant's binaural hearing loss at zero percent.

The Board finds that the Office medical adviser applied the proper standards to the May 5, 1998 audiogram results and properly determined that appellant has not sustained a ratable hearing loss.¹⁰

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Supra* note 4.

¹⁰ The record also contains an October 28, 1997 audiogram from appellant's HMO. However, this audiogram also does not indicate a ratable loss under the Office's uniform standard for calculating hearing impairment.

The August 5, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 3, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member