

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD E. WHITE and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Sacramento, CA

*Docket No. 99-2147; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has a compensable hearing loss causally related to noise exposure in his federal employment.

On January 2, 1998 appellant, then a 67-year-old retired special agent, filed a claim alleging that he sustained a hearing loss as a result of noise exposure in his federal employment. The record indicates that appellant retired in February 1980 and was exposed to the noise of firearms training from 1955 to 1979. The employing establishment submitted intermittent audiograms from 1977 to 1986.

The Office of Workers' Compensation Programs referred appellant, the medical records and a statement of accepted facts to Dr. David Kiener, a Board-certified otolaryngologist, who in a report dated May 13, 1998, provided a history and results on examination. Dr. Kiener diagnosed bilateral high frequency sensorineural hearing loss and bilateral tinnitus. He opined that appellant's exposure to excessive noise during his work was the cause of his predominantly high frequency hearing loss. Dr. Kiener further noted that appellant's hearing loss was having an effect on his daily life with significant problems in hearing, especially in the presence of background noise. He recommended a hearing aid for amplification of the high frequencies. Dr. Kiener included an audiogram dated May 13, 1998 from an audiologist. The audiogram reported hearing loss in the right ear of 10, 10, 15 and 30 decibels (dB) at the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz) respectively. For the left ear, the losses were 10, 5, 15 and 30 dB at the same frequencies. The calibration date of the audiometric equipment was January 13, 1998.

On June 15, 1998 the Office authorized appellant to purchase hearing aids.

The medical records were referred to Dr. Brian Schindler, a Board-certified otolaryngologist and an Office medical consultant, for an evaluation. In a report dated July 9, 1998, the medical consultant opined that appellant's hearing loss was consistent with noise

exposure, but for schedule award purposes the degree of hearing loss was not sufficient to be ratable. The medical consultant based his opinion on calculations taken from the May 13, 1998 audiogram.

In a decision dated July 13, 1998, the Office advised appellant that it had accepted that his hearing loss was causally related to noise exposure in his federal employment, but the extent of his hearing loss was not sufficient under the appropriate standards to entitle him to an award under 5 U.S.C. § 8107. Appellant was advised that he was still entitled to medical treatment. By decision dated March 10, 1999, finalized March 11, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that appellant does not have a compensable hearing loss causally related to noise exposure in his federal employment.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 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 and the “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. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The Board has concurred in the Office’s use of this standard for evaluating hearing losses for schedule award purposes.¹

The requirements for the medical evidence used in evaluating hearing loss are set forth in the Office’s procedures.² In the present case, appellant was referred for evaluation by Dr. Kiener. His report and accompanying audiometric testing results meet the requirements established by the Office and were properly used to evaluate appellant’s hearing loss. The results from Dr. Kiener show that at the frequencies of 500, 1,000, 2,000 and 3,000 Hz, appellant had dB losses of 10, 10, 15 and 30 in the right ear. The losses are averaged for a total of 16.25. As noted above, the fence of 25 must be deducted from the average dB loss, thereby resulting in a 0 percent impairment in the right ear. For the left ear, the average of the dB losses of 10, 5, 15 and 30 equals 15, but again the fence of 25 is deducted and the result is a 0 percent impairment in the left ear. Accordingly, the Board finds that the Office properly evaluated the medical evidence in concluding that appellant did not have a compensable hearing loss in this case.

Appellant contended that he has ringing in his ears, a condition he raised in his initial claim. However, the Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing.

¹ See *Danniel C. Goings*, 37 ECAB 781 (1986).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994). These requirements include a medical examination by an otolaryngologist, with audiological testing by a certified audiologist on equipment meeting the calibration protocol established by the American Speech-Language-Hearing Association (ASHA).

The A.M.A., *Guides* also allows for an award for tinnitus under disturbances of vestibular function.³ The Board notes that, although Dr. Kiener diagnosed bilateral tinnitus, there is no medical evidence that tinnitus caused or contributed to a ratable hearing loss. Additionally, since there are no objective findings of disequilibrium or evidence that appellant cannot perform his usual activities of daily living were presented,⁴ appellant is not entitled to an award for tinnitus which causes disturbances of vestibular function.

Appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity.⁵ However, there is no indication in the record that appellant sustained a loss of wage-earning capacity as a result of his tinnitus.

Because appellant has not demonstrated that his tinnitus caused or contributed to a ratable hearing loss and because appellant has not established that his tinnitus has caused vestibular function disturbances or a loss of wage-earning capacity, there is no basis for paying appellant a schedule award for tinnitus.

The decision of the Office of Workers' Compensation Programs dated March 10, 1999, finalized March 11, 1999, is affirmed.

Dated, Washington, DC
October 17, 2000

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

³ See A.M.A., *Guides* 146.

⁴ Although the record reflects that appellant's hearing condition has an effect on his daily life, there is no evidence that appellant cannot function in his daily life.

⁵ *Charles H. Potter*, 39 ECAB 645 (1988).