

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NICHOLAS G. MIRANDA and DEPARTMENT OF THE TREASURY,
BUREAU OF ENGRAVING & PRINTING, Washington, DC

*Docket No. 00-593; Submitted on the Record;
Issued August 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an increase in hearing loss causally related to noise exposure in his federal employment.

By decision dated December 4, 1990, the Office of Workers' Compensation Programs granted appellant a schedule award for a 19 percent binaural hearing loss. The award covered June 27, 1990 to March 19, 1991.

On July 30, 1995 appellant, then a 60-year-old plate printer, filed an occupational disease claim alleging that he sustained an additional hearing loss causally related to factors of his federal employment.

The employing establishment indicated that appellant was still exposed to noise¹ and submitted various documents, including appellant's job description, history of employment, foreman's statement, appellant's statement, a noise survey, audiograms and audiometric reports.

On January 29, 1996 the case record was referred to an Office medical adviser to determine whether appellant's hearing loss had increased. On January 31, 1996 the Office medical adviser stated that the latest audiogram dated May 30, 1995² revealed a 24.68 percent binaural hearing loss, but did not meet the Office's standards.

By letter dated February 8, 1996, the Office referred appellant for a second opinion examination and evaluation of medical records to Dr. Dino E. Flores, a Board-certified

¹ On March 20, 1996 appellant filed a claim for a schedule award (Form CA-7). Appellant retired effective December 10, 1995.

² The audiogram was actually dated May 3, 1995 and the audiological report of the results of that audiogram was dated May 30, 1995.

otolaryngologist. He stated that appellant's February 22, 1996 audiogram revealed a bilateral hearing loss of 17.81 percent.

On March 6, 1998 the Office medical adviser was asked to review Dr. Flores' March 4, 1996 report and accompanying audiogram. On March 11, 1996 the Office medical adviser stated that the deficiencies in the May 30, 1995 audiogram had been corrected. He found a binaural work-related hearing impairment of 24.68 percent, rounded to 25 percent less the 19 percent previous award for a 6 percent increase in hearing loss.

By letter dated March 13, 1996, the Office advised appellant that his claim for additional binaural hearing loss was accepted.

Subsequently, the Office medical adviser reviewed the February 22, 1996 audiogram performed for Dr. Flores. In a May 14, 1996 report, the Office medical adviser found that applying the Office standards to the February 22, 1996 audiogram revealed a 17.81 percent hearing loss which was less than the previous award of 19 percent in 1990.

By decision dated September 16, 1998, the Office explained that it inadvertently accepted additional binaural hearing loss based on the medical adviser's March 11, 1996 report, which was unsubstantiated. The Office noted that Dr. Flores' February 22, 1996 audiogram revealed a 17.81 percent permanent hearing loss. Because this rating was lower than the 19 percent previously awarded, appellant was not entitled to a schedule award for additional hearing loss.

The Board finds that appellant has failed to establish that he sustained an increase in hearing loss causally related to noise exposure in his federal employment.

The schedule award provisions of the Federal Employees' Compensation Act³ 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.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 permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using the hearing levels recorded 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

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8107.

⁵ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁶ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

ability to hear everyday speech in everyday conditions.⁷ 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.⁸ The Board has concurred in the Office's use of this new standard for evaluating hearing losses for schedule award proposes.⁹

In addition the Office has set forth requirements for the medical evidence to be used in evaluating occupational hearing loss claims. The requirements in the Office's Federal (FECA) Procedure Manual provide that the employee undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination, the date and hour of the employee's last exposure to loud noise, a rationalized medical opinion regarding the relationship of the hearing loss to employment-related noise exposure, and a statement on the reliability of the tests conducted.

The Office medical adviser applied the Office's standard procedures to the February 22, 1996 audiogram performed for Dr. Flores. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibels losses of 45, 60, 35 and 45, respectively. These decibels were totaled at 185 and were divided by 4 to obtain the average hearing loss at those cycles of 46.25 decibels. The average of 46.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 21.25 decibels, which was multiplied by the established factor of 1.5 to compute a 31.87 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels levels of 40, 40, 25 and 35, respectively. These decibels were totaled at 140 and were divided by 4 to obtain the average hearing loss at those cycles of 35 decibels. The average of 35 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 10, which was multiplied by the established factor of 1.5 to compute a 15 percent loss of hearing for the left ear.

The 15 percent for the left ear was multiplied by 5 and added to the amount for the right ear, 31.87, which totaled 106.87. The 106.87 was then divided by 6 to arrive at the percentage of binaural hearing loss. Accordingly, pursuant to the Office's standard procedures, the Office

⁷ A.M.A., *Guides*, 224.

⁸ *Id*; see also *Danniel C. Goings*, *supra* note 5 at 784.

⁹ *Danniel C. Goings*, *supra* note 5; *Richard Beggs*, *supra* note 5.

medical adviser properly determined that appellant sustained a 17.81 percent (rounded to 18 percent) binaural hearing loss.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided by Dr. Flores' report dated March 4, 1996 and the accompanying February 22, 1996 audiogram. This resulted in a calculation of a 17.81 percent (rounded to 18 percent) binaural hearing loss. Therefore, the Office properly concluded that the evidence established that appellant has no more than a 19 percent binaural hearing loss for which he received a schedule award. The Board notes that the medical adviser properly selected the February 22, 1996 audiogram obtained by Dr. Flores by noting that it met all of the Office's standards.¹⁰

The September 16, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 7, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ The Board notes that the May 3, 1995 audiogram performed for clinical audiologist Andrea J. Rozies, which found a higher impairment, failed to provide the date of calibration, the impedance threshold and stapedial reflex threshold measurements. Therefore, the audiogram is not in conformance with the standard for audiograms used in the evaluation of permanent impairment of hearing; *see* Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).