

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL L. HILL and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION, Spokane, WA

*Docket No. 01-180; Submitted on the Record;
Issued August 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On December 10, 1999 appellant, then a 48-year-old senior patrol agent for the U.S. Border Patrol, filed a notice of occupational injury alleging that his gradual hearing loss and ringing in the ears were due to prolonged exposure to gunfire and service radios and emergency equipment during his federal employment. Also on December 10, 1999 appellant claimed entitlement to a schedule award for an employment-related hearing loss.

In a report dated November 9, 1999, Dr. Robert A. Bonneau, a Board-certified otolaryngologist and appellant's treating physician, diagnosed a bilateral mild to moderate high frequency sensorineural hearing loss, which was possibly brought on and aggravated by noise exposure from weapon firing both in Southeast Asia as well as a bordering guard. Dr. Bonneau also advised that appellant has chronic tinnitus. A copy of an audiometric testing done on September 9, 1999 was provided.

In a report dated April 21, 2000, Dr. John Thomas Rulon, a Board-certified otolaryngologist and an Office of Workers' Compensation Programs' referral physician, reviewed the medical records of file and provided a complete otolaryngologic and audiometric evaluation. Dr. Rulon diagnosed a bilateral high frequency sensorineural hearing loss and opined that appellant's industrial noise exposure was competent to have caused the hearing loss. He stated that the April 21, 1999 audiometric evaluation revealed normal hearing for all frequencies tested in the right ear between 250 hertz (Hz) and 4,000 Hz. Above 4,000 Hz there was a steep sloping sensorineural hearing loss reaching 70 decibels (dB) at 8,000 Hz. In the left ear, the loss commenced at 3,000 Hz and reached 80 dB at 8,000 Hz. A speech reception threshold of 20 dB in each ear with speech discrimination scores of 100 percent in each ear was recorded. Tympanometry testing was found to be normal. Dr. Rulon advised that, under the American Academy of Otolaryngology formula for calculating compensable hearing loss,

appellant had a zero percent monaural hearing loss in both ears. He additionally advised that appellant was not a candidate for hearing aids.

By decision dated July 12, 2000, the Office accepted that appellant sustained an employment-related hearing loss but denied appellant's claim for a schedule award for permanent impairment because the evidence failed to demonstrate that appellant suffered a measurable percentage of hearing loss.

The Board finds that appellant does not have a ratable hearing loss sustained in the performance of duty.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Under the A.M.A., *Guides*, hearing loss is evaluated by determining the decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 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 ability to hear everyday speech in everyday conditions.³ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.

The September 20, 1999 testing provided by appellant's treating physician at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 10, 10, 5 and 15 in the left ear and 5, 10, 0 and 5 in the right ear, respectively. When the decibels in the left ear are totaled to equal 40 and divided by 4, the average hearing loss at those cycles is 10 decibels. When the average of 10 decibels is reduced by 25 decibels (the first 25 decibels are discounted as discussed above) to equal 0, which is multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. When the decibels in the right ear are totaled to equal 20 and divided by 4, the average hearing loss at those cycles is 5 decibels. When the average of 5 decibels is reduced by 25 decibels to equal 0, which when multiplied by the established factor of 1.5, computes to a 0 percent loss of hearing for the right ear. Accordingly, the testing revealed a zero percent binaural hearing loss.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides*, p. 224 (4th ed. 1993).

The April 21, 2000 testing provided by Dr. Rulon, the Office referral physician, also yield a zero percent binaural hearing loss. The frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 20, 25, 15 and 20 in the left ear and 15, 20, 15 and 25 in the right ear, respectively. When the decibels in the left ear are totaled to equal 80 and divided by 4, the average hearing loss at those cycles is 20 decibels. When the average of 20 decibels is reduced by 25 decibels (the first 25 decibels are discounted as discussed above) to equal 0, which is multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. When the decibels in the right ear are totaled to equal 75 and divided by 4, the average hearing loss at those cycles is 18.75 decibels. When the average of 18.75 decibels is reduced by 25 decibels to equal 0, which when multiplied by the established factor of 1.5, computes to a 0 percent loss of hearing for the right ear. The evidence of record does not establish that appellant has sustained a ratable hearing loss. For this reason, the Office properly denied his claim for a schedule award.

The Board notes that, if at some later date a medical examination indicates that appellant's condition has worsened, a claim for an amended schedule award can be made.⁴

Accordingly, the Office properly determined that appellant has a nonratable binaural hearing loss.

The July 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ *Michael C. Norman*, 42 ECAB 768 (1991).