

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY D. SEATE and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Norfolk, VA

*Docket No. 01-261; Submitted on the Record;
Issued August 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment that would entitle him to a schedule award.

On March 29, 1999 appellant, a 40-year-old machinist, filed a notice of occupational disease alleging that he sustained bilateral hearing loss as a result of exposure to hazardous noise in the performance of duty in his federal employment. Appellant indicated that he first became aware of his hearing condition in May 1986 when the aviation noise became so severe he had his hearing tested. On the reverse side of notice, the employing establishment indicated that appellant had not stopped work.

At the request of the Office of Workers' Compensation Programs, the employing establishment submitted personnel records, periodic audiological test results dated September 25, 1989, September 24¹ and July 18, 1997 and September 21, 1998.

In a January 5, 1999 report, Dr. Barry Strasnick, a Board-certified otolaryngologist, noted that appellant was seen in his office for complaints of tinnitus. According to Dr. Strasnick, the diagnostic evaluation revealed an asymmetric bilateral sensorineural hearing loss and "[c]omparison of the present audiogram compared to that in 1989 revealed progression of hearing loss in high frequencies." He recommended that appellant undergo tinnitus rehabilitation therapy and wear hearing protection when exposed to noise above 60 decibels. The audiogram obtained in conjunction with Dr. Strasnick's examination was not included with his report and is not of record.

By letter dated November 22, 1999, the Office referred appellant to Dr. Andrey I. Blumberg, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation

¹ The September 24, 1997 audiogram was interpreted by the audiologist, R.K. Rogers, as showing bilateral sensorineural hearing loss, but it was not certified by a physician, see *Joshua A. Holmes* 42 ECAB 231 (1990); *Alfred Avelar*, 26 ECAB 426 (1975).

and review of medical records. In conjunction with that evaluation, an audiogram was obtained on December 14, 1999. In his report of December 14, 1999, Dr. Blumberg diagnosed asymmetric sensorineural hearing loss due at least in part to appellant's noise exposure in his employment as a machinist. He stated:

“Available audiograms provided for review show [that appellant] has had a relatively stable asymmetric sensorineural hearing loss, primarily of the right ear since 1997. [Appellant] certainly has a sensorineural hearing loss in excess of what would be normally predicted on the basis of presbycusis. His workplace exposure would have a noise sufficient in intensity and duration to have contributed to a sensorineural hearing loss.”

On September 6, 1996 an Office medical adviser calculated appellant's percentage of hearing loss as zero percent monaural loss in the left ear, zero percent monaural loss in the right ear and zero percent binaural loss.

In a January 7, 2000 decision, the Office advised appellant that, while he sustained noise-induced hearing loss in the performance of duty, his hearing loss was not severe enough to be considered ratable for purposes of issuing a schedule award.

Appellant requested a hearing, which was held on July 18, 2000. At the hearing, appellant submitted audiograms dated July 17, 1984, June 2 and August 14, 1986, August 31, 1987, June 28, 1988, September 25 and 28 and July 24, 1989, August 2, 1990, July 16, 1991, July 13, 1992, December 9, 1993, January 27, 1995, November 12, 1996, July 18 and September 24, 1997, September 21, 1998, August 16, 1999 and July 6, 2000.²

He also submitted treatment notes from Dr. Martin W. Krepp dated May 30 and June 2, 1996 for treatment on tinnitus and earwax build-up in both ears.

In a decision dated October 10, 2000, an Office hearing representative affirmed the Office's January 7, 2000 decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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

² Some of these audiograms were already of record. As previously noted, because the audiograms were not certified by a physician, the Office was not required to evaluate them under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in determining appellant's entitlement to a schedule award. See *Holmes, supra* note 1.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluation schedule losses.

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second. 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. 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.⁵

In the instant case, the Office medical adviser applied the Office’s standardized procedures to the December 14, 1999 audiogram. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added up and averaged, and the “fence” of 25 decibels was deducted.³ The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For hearing levels recorded in the right ear of 15, 10, 15 and 35 decibels, and the left ear of 10, 10, 5 and 15 decibels, the above formula yields a nonratable hearing loss. Thus, while the Office has accepted that appellant’s employment-related noise exposure caused a bilateral hearing loss, the hearing loss is not sufficient, under the standards set forth in the A.M.A., *Guides*, to entitle appellant to a schedule award.

The decision of the Office of Workers’ Compensation Programs dated October 10, 2000 is hereby affirmed.

Dated, Washington, DC
August 24, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁵ *James England*, 47 ECAB 115 (1995); *see also* FECA Program Memorandum No. 272 (issued February 24, 1986).