

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID JOHNSON and DEPARTMENT OF THE NAVY,
NAVAL SURFACE WARFARE CENTER, West Bethesda, MD

*Docket No. 01-1094; Submitted on the Record;
Issued December 19, 2001*

DECISION and ORDER

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

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

The Board has duly reviewed the case record and finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.¹

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing federal regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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* (4th ed. 1993), has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

¹ On February 7, 2001 the Office of Workers' Compensation Programs issued a decision accepting appellant's claim for an employment-related hearing loss, but finding this hearing loss to have demonstrated a nonratable or noncompensable hearing loss in either ear. This decision is appealed to the Board.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ See *supra* note 3.

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then a “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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.⁷

The Office medical adviser correctly applied the Office’s standard procedures to the September 29, 2000 audiogram obtained by Dr. Barry S. Tatar, a Board-certified otolaryngologist, to whom the Office referred appellant. The Office medical adviser found that appellant’s hearing loss was not ratable for compensation purposes.

Testing for the right ear at the relevant frequencies revealed decibel losses of 15, 15, 10 and 40 for a total of 80, which was divided by 4 for an average hearing loss of 20 decibels, the average was reduced by the fence of 25 (the first 25 decibels were discounted as discussed above) to arrive at 0 or a nonratable loss of hearing in the right ear. The hearing loss in the right ear was nonratable under these standards and, therefore, noncompensable.

Testing for the left ear at the same frequencies revealed decibel losses of 15, 15, 20 and 50 decibels respectively for a total of 100. This figure was divided by 4, for an average hearing loss of 25 decibels; the average was reduced by 25 to arrive at 0 or a nonratable loss of hearing in the left ear. The hearing loss in the left ear was nonratable under these standards, and, therefore, noncompensable.

On appeal appellant contends that he has tinnitus, for which he should be compensated. The report of Dr. Tatar contains some support for appellant’s contention that he has tinnitus. However, as the Board has pointed out, “There is no basis for paying a schedule award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a permanent loss of hearing.” This is not established by the evidence of record. While an employee may be entitled to compensation if his tinnitus resulted in a loss of wage-earning capacity,⁸ there is no evidence in the record showing that appellant sustained a loss of wage-earning capacity as a result of the tinnitus.

⁶ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides*, 224 (4th ed. 1993); see also *Kenneth T. Escher*, 25 ECAB 335 (1974).

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁸ *Charles Joseph Kellerman*, 32 ECAB 333 (1980); see also *John A. Marsch*, 33 ECAB 580 (1982).

The decision of the Office of Workers' Compensation Programs dated February 7, 2001 is affirmed.

Dated, Washington, DC
December 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member