

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANET V. DOVE and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY INSPECTION SERVICE, Harrisonburg, VA

*Docket No. 00-96; Submitted on the Record;  
Issued February 9, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for a hearing loss.

On March 17, 1999 appellant, then a 55-year-old food inspector, filed a notice of occupational disease, alleging that she sustained permanent hearing loss while in the performance of duty. Appellant stated that she became aware of her hearing loss on October 3, 1995.

In an accompanying statement, appellant listed her history of employment, indicating that she had been exposed to excessive noise for 27 years beginning in 1972 until the present. Appellant noted exposure to various noises ranging from 93 to 96 decibels from conveyor belts and animals on an average of eight hours per day, five days per week. Appellant indicated that no hearing protection was available until 1980.

The employing establishment furnished the Office with copies of appellant's job description, medical records and employment records. Appellant's supervisor indicated that appellant had been continuously exposed to machinery noise at 93 to 96 decibels for an average of eight hours daily, five days a week. The supervisor also noted that appellant used hearing protection.

In a letter dated April 15, 1999, the Office advised appellant that the information submitted was insufficient to establish a claim for hearing loss and advised her of the type of factual and medical evidence needed to establish her claim and requested she submit such evidence.

In response to the Office's request, appellant submitted a detailed description of her employment history, two statements from her supervisor and two audiology reports prepared on behalf of Dr. Conrad R. Zapanta, an otolaryngologist. The March 3, 1999 audiology evaluation indicated an increase in hearing loss since her examination on November 8, 1995.

In a statement of accepted facts dated May 19, 1999, the Office noted appellant's hazardous noise exposure occurred from 1972 to the present and that she was exposed to various sources of noise ranging from 93 to 96 decibels an average of eight hours a day, five days a week. The sources of the noise included conveyer belts and animals. Appellant was provided with hearing protection in 1980.

On May 24, 1999 an Office medical adviser reviewed Dr. Zapanta's report dated March 3, 1999 and the audiometric test of the same date. The medical adviser indicated that he was unable to make a determination for schedule award purposes because no threshold recordings were made at the 3,000 hertz (Hz) level, which is essential for determining the percentage of hearing impairment.

In a letter dated May 26, 1999, the Office advised appellant that the medical adviser was unable to determine appellant's percentage of hearing impairment because no threshold recordings were made at the 3,000 Hz level. The Office advised appellant of the type of information needed to establish her claim and requested she submit such evidence.

On July 19, 1999 appellant submitted an audiology report dated July 8, 1999 performed on behalf of Dr. Wayne Gates, a Board-certified otolaryngologist. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed the following: right ear 25, 20, 15, and 15 decibels; left ear 15, 15, 15 and 25 decibels. The audiologist indicated that appellant had normal hearing in both ears with good work discrimination ability bilaterally.

In a July 14, 1999 decision, the Office notified appellant that her occupational disease claim had been accepted for bilateral hearing loss.

By letter dated August 18, 1999, the Office determined that the hearing loss was not severe enough to be considered ratable for purposes of a schedule award.

The Board finds that the case is not in posture for a decision.

Section 8107(c) of the Federal Employees Compensation Act<sup>1</sup> specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter, which rests in the sound discretion of the Office.<sup>2</sup> 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.<sup>3</sup> The Office has adopted and the Board has approved the American Medical

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8107(c)

<sup>2</sup> *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>4</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies 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 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. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.<sup>5</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss for schedule award purposes.<sup>6</sup>

In addition, the Office’s procedure manual requires that all claims for hearing loss due to its acoustic trauma, requires an opinion from a Board-certified specialist in otolaryngology.<sup>7</sup> The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA), or state licensure as an audiologist.<sup>8</sup>

Initially, appellant submitted a medical report from Dr. Zapanta and an audiogram performed for Dr. Zapanta. However, the March 3, 1999 audiogram could not be used to calculate impairment as it did not record threshold levels at 3,000 Hz. The Office’s standardized procedures were applied to the July 8, 1999 audiogram performed for Dr. Gates and indicated that appellant did not have a ratable hearing loss under those standards.<sup>9</sup> The July 8, 1999 audiogram was submitted by appellant in response to an Office request, but was neither signed by a physician nor accompanied by a physician’s report.

The Board has held that an audiogram prepared by an audiologist must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss.<sup>10</sup> Office procedures provide that unless the case file already contains a reliable medical report, which fully meets Office’s requirements, the claims examiner should refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment.<sup>11</sup> These

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<sup>4</sup> *Jimmy B. Newell*, 39 ECAB 181 (1987).

<sup>5</sup> P.A.M.A., *Guides*, 166 (4<sup>th</sup> ed. 1994).

<sup>6</sup> *See Goings*, *supra* note 3.

<sup>7</sup> Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

<sup>8</sup> Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

<sup>9</sup> This decision does not affect appellant’s entitlement to appropriate medical benefits for the accepted employment injury.

<sup>10</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>11</sup> Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter

procedures also provide that an Office medical adviser shall calculate the percentage of hearing loss and verify the calculations of the audiologist.<sup>12</sup>

In this case, the July 8, 1999 audiogram submitted by appellant was not certified as accurate by a physician and, therefore, did not conform with the Office's standards.

The Board notes that proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup>

The Board finds that the Office failed to send the audiogram dated July 8, 1999 out to the Office medical adviser for review as required by its procedures. As the Office shares responsibility in the development of the evidence, the case will be remanded for the Office to refer appellant to a Board-certified otolaryngologist for an appropriate evaluation consistent with its procedures. After this and such other development as deemed necessary, the Office shall issue an appropriate merit decision.

The August 18, 1999 decision is set aside and the case is remanded for further development.

Dated, Washington, DC  
February 9, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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3.600.8(a)(1) (September 1995).

<sup>12</sup> Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(6) (September 1995).

<sup>13</sup> *Jimmy A. Hammons*, 51 ECAB \_\_ (Docket No. 98-1259, issued December 8, 1999).