

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY D. MILEY and DEPARTMENT OF THE ARMY,
LETTERKENNY ARMY DEPOT, Chambersburg, PA

*Docket No. 00-830; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to a schedule award for a hearing loss.

On December 8, 1998 appellant, then a 43-year-old artillery inspector, filed an occupational disease claim for a hearing loss, which began in 1975 when he worked in a high hazard noise area. Appellant added that he also worked around test firing vehicles in a highly explosive powder area.

The Office of Workers' Compensation Programs accepted that appellant had a bilateral hearing loss. By decision dated June 26, 1999, the Office found that appellant had no ratable hearing loss. By decision dated July 12, 1999, the Office denied appellant's request for modification.

The Board has duly reviewed the case record and concludes that appellant has not established that he is entitled to a schedule award for a hearing loss.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule 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 does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and the “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 under everyday conditions. 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 5, then added to the greater loss and the total is divided by 6, to arrive at the amount of the binaural loss.⁴ The Board has concurred in the Office’s use of this standard for evaluating hearing losses for schedule award purposes.⁵

In this case, the Office determined that appellant was not entitled to a schedule award based on the then most recent audiogram of record dated January 21, 1999, this report by the second opinion physician, Dr. Edward F. Sickel, a Board-certified otolaryngologist, and the February 24, 1999 report by the district medical adviser. Dr. Sickel found that appellant had a bilateral high tone sensory loss beginning at 3,000 hertz in each ear, with a “3-frequency average of 10 in the right ear and 12 in the left ear,” a “SRT of 10 in both ears” and that using the “25 decibels fence ... AAO method,” appellant had a zero percent binaural impairment.

In his February 24, 1999 report, the district medical adviser determined that on the January 21, 1999 audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear, 5, 10, 15 and 40 decibels respectively, totaled 70 decibels. He totaled the decibel losses at the above-mentioned frequencies for the left ear, 10, 10, 15 and 40 respectively, at 75 decibels. The district medical adviser indicated that, when the total decibel average for each ear was subtracted by the 25 decibel “fence,” appellant had a zero percent impairment in each ear. He concluded that appellant had no ratable loss.

In his request for reconsideration dated April 8, 1999, appellant submitted an audiogram dated April 6, 1999 and a medical report dated April 7, 1999 from Dr. James M. Chicklo, a Board-certified otolaryngologist. In his April 7, 1999 report, Dr. Chicklo stated that, although the 500, 1,000 and 2,000 frequencies were normal, the high frequencies were “most certainly” depressed in a typical pattern of noise damage. He opined that appellant had incurred noise damage and did not have 100 percent hearing.

In a report dated May 4, 1999, the district medical adviser reviewed the April 7, 1999 audiogram of Dr. Chicklo. He determined that on the April 7, 1999 audiogram the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second of the right ear, 10 decibels, 20

³ *Arthur E. Anderson, supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *See also* A.M.A., *Guides* at 224 (4th ed. 1993).

⁵ *Danniel C. Goings, supra* note 2.

decibels, 15 decibels and 50 decibels respectively, totaled 95, which divided by 4 yielded the average hearing loss at those frequencies of 23.75 decibels. The district medical adviser reduced the average 23.75 decibels by 25 to equal 0.

He totaled the decibel losses at the above-mentioned frequencies for the left ear, 10, 10, 20 and 50 respectively, at 90, which he divided by 4 to obtain the average hearing loss at those frequencies of 22.5 decibels. He reduced 22.5 decibels by the 25 decibel "fence" to equal 0. The district medical adviser concluded that the April 7, 1999 audiogram showed that appellant had a nonratable hearing loss. The Board finds that the district medical adviser applied the proper standards to the April 4, 1999 audiogram and properly determined that appellant has a zero percent binaural loss. Appellant has not submitted any evidence to the contrary.

The decisions of the Office of Workers' Compensation Programs dated July 12 and February 26, 1999 are hereby affirmed.

Dated, Washington, DC
February 15, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member