

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD J. WIERENGA and DEPARTMENT OF JUSTICE,
MARSHALS SERVICE, Tallahassee, FL

*Docket No. 00-1249; Submitted on the Record;
Issued February 22, 2001*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a ratable hearing loss causally related to his federal employment.

On August 5, 1999 appellant, then a 57-year-old retired supervisory criminal investigator, filed an occupational disease claim for loss of hearing related to his federal employment. Appellant retired from duty on May 31, 1999. In support of his claim, appellant submitted employment records pertaining to his job duties; medical evidence including audiometry tests dated May 11, 1994, May 31, 1995, June 6, 1997, August 18 and October 16, 1998, and May 14, 1999; a report dated May 14, 1999 in which Dr. Rick Damron, a Board-certified internist, noted that appellant had significant hearing difficulty as documented on the formal audiometry; and a medical review form dated July 20, 1999 in which Dr. R. Miller, an employing establishment physician, noted that appellant had a high frequency hearing loss in both ears.

By letter dated August 19, 1999, the employing establishment provided specific information pertaining to appellant's noise exposure and precautions taken.

On November 16, 1999 the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts, the medical record and a set of questions to Dr. John Grant, a Board-certified otolaryngologist, for a second opinion. Dr. Grant submitted a form report dated December 21, 1999 noting that appellant had binaural sensorineural hearing loss. He opined that appellant's workplace noise exposure could be of sufficient intensity and nature to cause the hearing loss. An audiogram submitted with Dr. Grant's report indicated testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed losses of 25, 25, 15 and 30 decibels (dBs) respectively; in the right ear, and losses of 20, 25, 20 and 35 dBs respectively in the left ear.

The Office then referred appellant's case to the district medical adviser, who, in a report dated January 19, 2000, noted appellant's diagnosis of bilateral sensorineural and calculated that appellant's schedule award was zero percent.

By decision dated January 20, 2000, the Office determined that appellant's claim for hearing loss was accepted, but that his hearing loss was not severe enough to be considered ratable.

The Board finds that appellant is not entitled to a schedule award for his hearing loss.

Under section 8107 of the Federal Employees' Compensation Act and section 10.304 of the implementing regulations, schedule awards are payable for permanent impairment of specified bodily members, functions or organs.¹

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereafter 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 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs 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.² The Board has concurred in the Office's adoption of this standard for evaluation of hearing loss for schedule award purposes.³ In addition, Office procedures require that all claims for hearing loss due to its acoustic trauma requires an opinion from a Board-certified specialist in otolaryngology,⁴ and 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.⁵

In the present case, Dr. Grant submitted a report that conforms with the applicable criteria of the A.M.A., *Guides*. The audiogram performed under his auspices demonstrates decibel losses of the right ear of 25, 25, 15 and 30 dBs respectively and of 20, 25, 20 and 35 dBs in the left ear. This would equal a 23.75 percent loss of hearing in the right ear and a 25 percent hearing loss in the left ear that would compute to a zero binaural hearing loss. This calculation was confirmed by the district medical adviser.

As noted by the district medical adviser in a memorandum dated January 19, 2000, after the fence of 25 decibels is deducted, no ratable hearing loss resulted in either the right or left ear.

¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

² A.M.A., *Guides* at 166 (4th ed. 1993).

³ See *James A. England*, 47 ECAB 115 (1995).

⁴ *Raymond VanNett*, 44 ECAB 480 (1993).

⁵ *Id.*

The record, therefore, indicates that, although appellant has an employment-related hearing loss, it is not considered ratable under the appropriate standards used to determine ratability for schedule awards under the Act. The Office properly determined that appellant was not entitled to a schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated January 20, 2000 is hereby affirmed.

Dated, Washington, DC
February 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member