

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMIRO GONZALEZ and DEPARTMENT OF JUSTICE,
U.S. BORDER PATROL STATION, Del Rio, TX

*Docket No. 00-1349; Submitted on the Record;
Issued July 19, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained a compensable hearing loss causally related to factors of his federal employment.

On October 30, 1998 appellant, then a 57-year-old border patrol agent, filed an occupational disease claim alleging that he sustained a bilateral hearing loss in both ears due to exposure to noise in the course of his federal employment. He stated that he first became aware that he had a hearing loss problem due to his employment in April 1993.

Accompanying the claim, the employing establishment submitted a 1983 firearms noise level survey; a 1981 sound level survey; a July 28, 1998 audiogram; and appellant's statement which included a history of employment and answers to several questions on the claim form.

On January 20, 1999 the record was supplemented with an April 25, 1988 medical report of over 40 physical examination, which included audiogram results indicating hearing loss in both ears.

By letter dated February 19, 1999, the Office of Workers' Compensation Programs requested additional medical evidence from appellant.

On February 22, 1999 the record was supplemented with two witness statements from officers who worked with appellant and observed his inability to hear during normal conversations.

On April 20, 1999 the Office referred appellant, the case record and a statement of accepted facts to Dr. Lee Paul Fry, a Board-certified otolaryngologist, for an examination and evaluation of medical records and to audiologist Mike King for audiometric testing. On September 14, 1999 the record was supplemented with Dr. Fry's May 4, 1999 office notes and Mr. King's April 29, 1999 audiogram. In his notes Dr. Fry stated that the audiogram showed marked symmetrical bilateral high frequency sensorineural hearing loss.

On October 6, 1999 the Office, after failed attempts to obtain a complete report from Dr. Fry, referred appellant to Dr. Gerald Laursen, a Board-certified otolaryngologist, for evaluation and review of the April 29, 1999 audiogram and April 14, 1999 statement of accepted facts. In an October 25, 1999 report, Dr. Laursen stated that appellant suffered from noise-induced sensorineural hearing loss due to noise exposure in his federal employment. He also submitted an October 25, 1999 audiogram.

On November 28, 1999 a district medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Laursen to determine that appellant had a nonratable hearing loss. The district medical adviser indicated that the date of maximum medical improvement was October 25, 1999.

By decision dated December 8, 1999, the Office accepted appellant's claim for a hearing loss due to his employment-related noise exposure. The Office determined, however, that appellant's hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees' Compensation Act.¹ The Office also found that appellant was entitled to medical benefits.

The Board finds that appellant does not have a ratable hearing loss.

The schedule award provision of the Act² and its implementing regulation³ 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 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 evaluating schedule losses.

Under the A.M.A., *Guides*, hearing loss is evaluated by determining the decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz). 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.⁴ 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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides*, 224.

⁵ *Id*; see also *Danniel C. Goings*, 37 ECAB 781 (1986).

The district medical adviser applied the Office's standard procedures to the October 25, 1999 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels levels of 20, 15, 10 and 25, respectively. These decibels were totaled at 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibels levels of 20, 15, 10 and 35, respectively. These decibels were totaled at 80 and were divided by 4 to obtain the average hearing loss at those cycles of 20 decibels. The average of 20 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standard procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the district medical adviser properly applied the appropriate standards to the findings provided in Dr. Laursen's report dated October 25, 1999 and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above.

The December 8, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 19, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member