

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENDERSON COOK and DEPARTMENT OF THE NAVY
NAVAL AVIATION DEPOT, Pensacola, FL

*Docket No. 00-1672; Submitted on the Record;
Issued June 5, 2001*

DECISION and ORDER

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

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

On November 5, 1997 appellant, then a 50-year-old aircraft sheet metal mechanic, filed an occupational disease claim for hearing loss caused by noise exposure in the course of his federal employment. He stated that he first became aware that his condition was caused or aggravated by his employment on March 1, 1989. Appellant did not lose any time from work.¹

By letter dated February 24, 1998, the Office of Workers' Compensation Programs referred appellant, the case record and the statement of accepted facts to Dr. James M. Carlisle, a Board-certified otolaryngologist, for otologic and audiologic testing an audiogram was performed by a qualified audiologist on March 25, 1998 for Dr. Carlisle.

In an April 7, 1998 report, Dr. Carlisle noted that appellant had relatively normal hearing sensitivity with possibly a mild high frequency sensorineural hearing deficit as indicated by the audiograms in 1997 and 1994, which agreed he indicated that appellant had no trouble understanding his questions when he spoke to him with his back towards him in a very soft voice and that his hearing loss was not characteristic of presbycusis. Dr. Carlisle recommended a repeat audiometric evaluation.

By letter April 30, 1998, the Office informed appellant that a repeat hearing loss examination was needed to determine the degree of his hearing loss. An audiogram was performed by a qualified audiologist on June 3, 1998 for Dr. Carlisle.

In a June 19, 1998 report, Dr. Carlisle noted that appellant's left ear showed a mild sensorineural hearing loss in the frequencies of 2.5K and .5K Hz with recovery at 1K Hz and

¹ The employing establishment initially indicated that appellant had retired. However, appellant accepted a new position with the employing establishment in June 1994 and continued to work.

subsequent decrease to a moderate sensorineural loss at 8K Hz. In the right ear, appellant had a moderate sensorineural loss, which was present from 2.5K Hz through 2K Hz decreasing to a moderate to severe loss at the 6K Hz with slight improvement to the moderate range at 8K Hz. Dr. Carlisle recommended a repeat audiometric evaluation in three months.

By letter dated September 15, 1998, the Office advised appellant that a further testing session was needed. An audiogram was performed by a qualified audiologist on October 29, 1998 for Dr. Carlisle.

In a December 4, 1998 report, Dr. Carlisle indicated that appellant's third retesting hearing within normal limits in the right ear through 2K Hz, dropping to a mild loss at 3K Hz with return to normal at 8K Hz. Dr. Carlisle indicated that, in the left ear, hearing was normal through 1K Hz, decreasing to a mild sensorineural hearing loss at 2K Hz and above. He also noted that speech reception thresholds were compatible with pure tone findings and discrimination was 100 percent in each ear. Dr. Carlisle found that these findings concurred with his continued clinical impression of a mild sensorineural hearing loss.

After review of the audiogram and Dr. Carlisle's December 4, 1998 report, an Office medical adviser determined that appellant sustained bilateral sensorineural hearing loss, but that the audiogram dated October 29, 1998 revealed a zero percent hearing loss in both ears. Dr. Carlisle advised that, due to the questionable reliability of prior audiometric tests, the third test on October 29, 1998 was valid.

In an April 8, 1999 decision, the Office accepted appellant's claim for hearing loss due to his employment-related noise exposure but found no compensable impairment.

The Board finds that appellant has not established that he sustained a ratable hearing loss.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.² The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.³ However, as a matter of administrative practice, the Board has stated: "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."⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency

² 5 U.S.C. § 8107.

³ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁴ *Id.*

⁵ *Stuart M. Cole*, 46 ECAB 1011 (1995).

are added up and averaged.⁶ Then the “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 speech under everyday conditions.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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 hearing loss.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

In this case, the Office medical consultant reviewed the October 29, 1998 audiogram and noted that testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 25, 25 and 30, respectively. These losses were totaled to 95 and divided by 4 to obtain the average hearing loss at those cycles of 23.75. The average of 23.75 decibels was then reduced by 25 decibels to equal 0 decibels for the right ear, which was multiplied by the established factor 1.5 to compute a 0 percent loss of hearing for the right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 20, 20, 30 and 30 decibels respectively. These losses were totaled at 100 decibels and divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels which was multiplied by the established factor 1.5 to compute a 0 percent loss of hearing for the left ear. The consultant then multiplied the zero percent loss in the right ear (the ear with the lesser loss) by five, added it to the zero percent loss in the left ear (the ear with the greater loss) and divided the sum by six to calculate the appellant’s binaural hearing loss at zero percent.

The Board finds that the Office medical adviser applied the proper standards to the October 29, 1998 audiogram results and determined that appellant has not sustained a ratable hearing loss.¹¹

⁶ A.M.A., *Guides*, 224 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* note 4.

¹¹ In his appeal, appellant supplied additional medical documentation; however, the Board cannot consider new evidence on appeal. He can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2)(1999); *see* 20 C.F.R. § 501.2(c).

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

Dated, Washington, DC
June 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member