

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUSTAVO CAMPOS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, El Paso, TX

*Docket No. 00-2464; Submitted on the Record;
Issued June 18, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a ratable hearing loss while in the performance of duty.

On September 9, 1999 appellant, then a 47-year-old special agent, filed an occupational disease claim alleging that he sustained permanent hearing loss while in the performance of duty. Appellant did not stop work.

By letter dated September 24, 1999, the Office of Workers' Compensation Programs requested additional medical evidence from appellant in support of his claim.

In response, appellant indicated that he had been exposed to excessive noise from 1976 until the present. When employed as an immigration inspector, he was exposed to automobile noise for four hours a day and as a special agent he was exposed to weapon noise from shotguns and handguns during quarterly qualification sessions. Appellant was provided with hearing protection devices during the weapon qualification sessions.

By letter dated December 7, 1999, the Office referred appellant to Dr. Ronald J. Blumenfeld, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The Office provided Dr. Blumenfeld with a statement of accepted facts and available exposure information.

Dr. Blumenfeld performed an otologic evaluation of appellant on January 6, 2000 and audiometric testing was conducted on the doctor's behalf. He determined that appellant sustained employment-related high frequency hearing loss with scarred tympanic membranes and acoustic trauma on the right side.

On March 9, 2000 an Office medical adviser reviewed Dr. Blumenfeld's report and the audiometric test. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's current standards for

evaluating hearing loss to the results of the January 6, 2000 audiology test. The medical adviser determined that appellant has a 0 percent monaural hearing loss in the left ear and a 0 percent monaural hearing loss in the right ear.

In a March 17, 2000 decision, the Office notified appellant that his occupational disease claim had been accepted for binaural hearing loss, however, the hearing loss was not severe enough to be considered ratable for purposes of a schedule award.

In a letter dated April 10, 2000, appellant requested a review of the written record. He submitted an audiogram dated April 4, 2000, which was not certified by a physician.

In a July 13, 2000 decision, the hearing representative denied the claim on the grounds that the evidence of record failed to establish that appellant sustained a hearing loss severe enough to be considered ratable for schedule award purposes.

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

Section 8107(c) of the Federal Employees Compensation Act¹ 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 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 necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*, using the hearing levels recorded at frequencies 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 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.⁴ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss for schedule award purposes.⁵

In addition, the federal procedure manual requires that all claims for hearing loss due to acoustic trauma be based on an opinion from a Board-certified specialist in otolaryngology.⁶

¹ 5 U.S.C. §§ 8101-8193; § 8107(c)

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

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

⁴ Page 166 (4th ed. 1994).

⁵ *Daniel Goings*, *supra* note 2.

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

The procedure manual further indicates that audiological testing is to be performed by persons possessing certification from the American Speech and Language Hearing Association (ASHA) or state licensure as an audiologist.⁷

An Office medical adviser applied the Office's standard procedures to the January 6, 2000 audiogram performed for Dr. Blumenfeld. Testing for the right ear at the frequency levels of 500, 1,000 and 3,000 Hz revealed decibels losses of 10, 10, 5 and 10 respectively. These decibels were totaled at 35 and were divided by 4 to obtain an average hearing loss at those cycles of 8.75 decibels. The average of 8.75 decibels was then reduced by 25 decibels 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 losses of 10, 10, 10 and 10 respectively. These decibels were totaled at 40 and were divided by 4 to obtain the average hearing loss at those cycles of 10.00 decibels. The average of 10.00 decibels was then reduced by 25 decibels to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss for the left ear. The medical adviser determined that appellant had no ratable hearing loss.

Following the Office's March 17, 2000 decision, appellant submitted an audiogram dated April 4, 2000 which 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 loss of hearing.⁸ Thus, the Office was not required to rely on the April 4, 2000 audiogram in determining the degree of appellant's permanent impairment.⁹

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Blumenfeld's January 7, 2000 report and the accompanying audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss.¹⁰

⁷ Federal (FECA) Procedural Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

⁸ See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990); *James A. England*, 47 ECAB 115 (1995).

⁹ The Board notes that the Office determined that appellant sustained no ratable hearing loss using the audiological test of April 4, 2000.

¹⁰ This decision does not affect appellant's entitlement to appropriate medical benefits for the accepted employment injury.

The July 13 and March 17, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 18, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member