

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES G. GRIFFITH and DEPARTMENT OF THE ARMY,
U.S. ARMY FORCES COMMAND, Fort Huachaca, AZ

*Docket No. 00-945; Submitted on the Record;
Issued March 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a ratable hearing loss in the performance of duty.

On April 28, 1998 appellant, then a 62-year-old retired logistics management specialist, filed a claim alleging that he sustained bilateral hearing loss due to hazardous noise exposure in the performance of duty from 1960 through his retirement from federal employment effective March 3, 1998. He submitted job descriptions and noise survey data¹ documenting his exposure to noise over 85 decibels from sources such as heavy warehousing equipment, tractors, forklifts, aircraft engines, military cargo planes and punch card computers.² Appellant was not provided with hearing protection during his federal employment.

In an August 26, 1998 report, Dr. John B. Kurtin, an attending Board-certified otolaryngologist, related appellant's history of noise exposure with tinnitus and hearing loss gradually increasing since 1969. Dr. Kurtin diagnosed a bilateral high frequency sensorineural hearing loss. He obtained an audiogram on August 18, 1998, showing decibel losses of 15, 10, 20 and 25 in the right ear and 20, 15, 15 and 30 at the frequencies of 500, 1,000, 2,000 and 3,000

¹ Appellant also submitted employing establishment audiograms and fitness-for-duty examination notes dated September 8, 1960 through February 23, 1998 indicating an increasing high frequency hearing loss.

² Appellant worked from September 26, 1960 through March 24, 1967 at Tinker Air Force Base, Oklahoma, in warehousing and inventory management positions. From March 25, 1967 to March 3, 1998, appellant worked at the employing establishment in inventory and logistics management.

hertz (Hz) respectively. Tympanometry was within normal limits in both ears.³ In an October 16, 1998 follow-up report, Dr. Kurtin opined that appellant's hearing loss was "related to noise exposure from his work."

The Office of Workers' Compensation Programs then referred appellant, the record and a statement of accepted facts to Dr. David N. Schindler, an Office medical adviser, for an opinion regarding the cause of appellant's hearing loss and the calculation of the percentage of hearing loss according to the standardized grading procedures of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) (hereinafter, the "A.M.A., *Guides*").

In a November 10, 1998 report, Dr. Schindler noted appellant's long history of occupational noise exposure and opined that appellant's high frequency hearing loss "was aggravated by the conditions of [f]ederal [e]mployment." He diagnosed "bilateral high frequency hearing loss, consistent in part with hearing loss of noise exposure...." Dr. Schindler then applied the A.M.A., *Guides*' standardized procedures to Dr. Kurtin's August 18, 1998 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 10, 20 and 25. These decibels were totaled at 70 decibels 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 the "fence" of 25 decibels below which there is not considered to be a functional hearing impairment, 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 decibel losses of 20, 15, 15 and 35. These decibels were totaled at 85 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 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 left ear. Dr. Schindler stated that hearing aids were not indicated.

By decision dated December 16, 1998, the Office denied appellant's claim for a schedule award. The Office accepted that appellant sustained a bilateral high frequency hearing loss in the performance of duty "due to many years of exposure to hazardous noise" without hearing protection. However, Dr. Kurtin's August 18, 1998 audiogram, as reviewed by Dr. Schindler, demonstrated no ratable hearing impairment according to the uniform standards set forth in the A.M.A., *Guides*. The Office found that appellant remained entitled to continuing medical benefits and treatment for the accepted bilateral hearing loss.

Appellant disagreed with this decision and in a December 31, 1998 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held August 3, 1999. At the hearing, appellant asserted that the Office should be responsible for providing hearing aids if he eventually required them.

³ The record contains an April 27, 1998 audiogram showing decibel losses of 10, 10, 20 and 25 in the right ear and 10, 15, 25 and 25 in the left ear were evident at frequencies of 500, 1,000, 2,000 and 3,000 Hz. As this audiogram does not appear to have been signed or reviewed by a physician, it cannot be considered medical evidence for the purposes of this case. *Merton J. Sills*, 39 ECAB 572 (1988). Arguendo, the Board notes that the decibel losses noted were not ratable for schedule award purposes.

By decision dated and finalized October 7, 1999, the Office affirmed the December 16, 1998 schedule award decision finding that appellant did not have a ratable hearing loss. The hearing representative noted that the Office's schedule award calculations, based on Dr. Schindler's report, did not demonstrate any mathematical or substantive errors.

The Board finds that appellant has not established that he sustained a ratable hearing loss in the performance of duty.

The schedule award provisions of the Federal Employees' Compensation Act⁴ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule, including hearing loss. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. Thus, as a matter of administrative practice and to ensure consistent results for all claimants, the Office has adopted and the Board has approved of the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* (4th ed. 1993). Utilizing 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 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. 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.⁶

In this case, the Office accepted that appellant sustained a bilateral high frequency hearing loss in the performance of duty due to prolonged exposure to hazardous noise above 85 decibels. What is at issue is whether the accepted hearing loss is severe enough to be ratable under the A.M.A., *Guides*. The Board finds that Dr. Schindler, the Office medical adviser, correctly applied the standardized evaluation methods set forth in the A.M.A., *Guides* and accurately calculated that appellant did not have a ratable hearing loss as of Dr. Kurtin's

⁴ 5 U.S.C. § 8107. See generally 5 U.S.C. §§ 8101-8193.

⁵ A.M.A., *Guides* (4th ed., 1993); see *Danniel C. Goings*, 37 ECAB 781 (1986) (where the Board concurred in the Office's use of the standards set forth in the A.M.A., *Guides* in evaluating hearing loss for schedule award purposes).

⁶ See A.M.A., *Guides* at 224 (4th ed., 1993); see also *Danniel C. Goings, Id.*

August 18, 1998 audiogram. As noted above, the standards applied to appellant's case are the same standards applied to all employees in hearing loss claims under the Act.⁷

Consequently, appellant has not established that he sustained a ratable hearing loss in the performance of duty, as he submitted no medical evidence indicating that his accepted bilateral hearing loss was sufficiently severe to be ratable under the uniform standards set forth in the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated and finalized October 7, 1999 is hereby affirmed.

Dated, Washington, DC
March 28, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ At the August 3, 1999 hearing and on appeal, appellant contends that if his hearing loss worsens over time, he may require hearing aids and that the Office should be responsible for providing hearing aids, batteries and periodic audiologic examinations and testing. The Board notes that appellant remains entitled to medical benefits and appropriate treatment of the accepted hearing loss.