

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. JORDAN and DEPARTMENT OF THE NAVY,
EARLE NAVAL WEAPONS STATION, Colts Neck, NJ

*Docket No. 00-1338; Submitted on the Record;
Issued May 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained more than a 17 percent left ear monaural hearing loss, for which he received a schedule award; and (2) whether appellant sustained a ratable right ear hearing loss.

On July 17, 1997 appellant, then a 60-year-old mechanic supervisor, filed an occupational disease claim, alleging that he sustained hearing loss causally related to factors of his federal employment. He further alleged that he first realized that his hearing loss was caused or aggravated by his federal employment on June 30, 1997. Appellant stopped work on July 1, 1997 because of a reduction-in-force.

By decision dated July 10, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for binaural hearing loss and authorized the purchase of hearing aids.

On August 29, 1998 appellant filed a claim for a schedule award.

The Office referred appellant to Dr. Patrick Houston, a Board-certified otolaryngologist and Rachel Olanoff, an audiologist, for a second opinion examination. A May 21, 1998 audiogram by Ms. Olanoff, which was reviewed by Dr. Houston, showed the following decibel losses at the 500, 1,000, 2,000 and 3,000 Herz (Hz) frequency levels: 20, 5, 10 and 45 for the right ear; and 15, 10, 40 and 80 for the left ear. In accompanying reports, Dr. Houston diagnosed neurosensory hearing loss and opined that appellant's condition was causally related to workplace noise exposure. He noted that appellant's hearing was "normal" at the beginning of his noise exposure during his federal employment.

In a report dated June 29, 1998, Ellen Pfeffer Lafargue, an audiologist, opined that appellant sustained a 16.875 percent left ear hearing loss and no ratable right ear hearing loss. She noted that appellant sustained a "cauliflower" ear injury while wrestling from 1958 to 1960.

She stated that the May 21, 1998 audiogram was complete and reliable. Regarding the cause of appellant's hearing loss, Ms. Lafargue stated:

“If, in fact, hazardous noise levels existed and, if retrocochlear pathology is ruled out as the cause of the hearing loss, then, given [appellant's] history of exposure to noise and the configuration of the hearing loss, high frequency sensorineural hearing loss due to noise exposure during federal employment cannot be ruled out.”

On June 22, 1999 the Office referred appellant's medical records to Dr. Daniel Kalash, an Office medical adviser. In his report dated July 10, 1998, he applied the Office's standards for evaluating hearing loss and found that appellant sustained a 16.875 percent left ear hearing loss. He also found that appellant reached maximum medical improvement on May 21, 1998.

By decision dated September 8, 1998, the Office granted appellant a schedule award for a 17 percent left ear hearing loss. The award ran for 8.84 weeks from May 21 to July 21, 1998. The Office authorized a hearing aid for the left ear.

By letter dated September 14, 1998, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

On April 8, 1999 an oral hearing was held before an Office hearing representative. Appellant testified, among other things, that his federal employment commenced on May 3, 1982 and ended in July 1997 when he retired. He stated that he had difficulty understanding conversation and that he must listen to his television at a higher volume than he did in the past. Appellant alleged that he could not distinguish between the hearing in his left and right ears. He stated that he sustained a “cauliflower” injury to his left ear while wrestling but hearing tests at that time showed that his hearing was “perfect.” Appellant stated that since his federal employment ended he had not been exposed to loud noise. The record remained open for 30 days.

Appellant submitted a report dated April 7, 1999 in which Dr. Sadeq A. Razvi, a Board-certified otolaryngologist, diagnosed bilateral moderate to profound hearing loss in the middle to high frequencies. Dr. Razvi also noted that appellant had a history of working around loud machinery. The report indicated that an audiogram was completed showing the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hz frequency levels: 30, 20, 30 and 65 for the right ear; and 35, 25, 55 and 70 for the left ear.

By decision dated May 24, 1999, the Office hearing representative affirmed the Office's September 8, 1998 decision. He concluded that appellant sustained a 17 percent hearing loss of the left ear and no ratable hearing loss of the right ear.

By letter dated September 2, 1999, appellant, through his attorney, requested reconsideration of the Office's May 24, 1999 decision. To support his request, appellant submitted an undated report in which Dr. Razvi indicated that there was a significant variation from the statement of accepted facts and that appellant's workplace noise exposure was sufficient to have caused his hearing loss. An audiogram performed by Claire W. Cannon, an audiologist and reviewed by Dr. Razvi, showed the following decibel losses at the 500, 1,000,

2,000 and 3,000 Hz frequency levels: 25, 20, 45 and 70 for the right ear; and 30, 35, 65 and 90 for the left ear.

By letter dated September 30, 1999, the Office requested that appellant clarify whether he requested review of his schedule award or compensation authorized prior to the schedule award. The Office allowed him 10 days within which to respond to its request.

By decision dated November 1, 1999, the Office affirmed the hearing representative's decision on the grounds that the evidence submitted to support appellant's reconsideration request was insufficient to warrant further merit review.

The Board finds that this case is not in posture for decision on the issues of whether appellant sustained more than a 17 percent left ear hearing loss and whether he sustained a ratable right ear hearing loss.

Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹

In this case, appellant's treating physician, Dr. Razvi provided a report showing that appellant sustained the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hz frequency levels: 25, 20, 45 and 70 for the right ear; and 30, 35, 65 and 90 for the left ear. Dr. Houston serving as a second opinion specialist for the Office, found that appellant sustained the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hz frequency levels: 20, 5, 10 and 45 for the right ear; and 15, 10, 40 and 80 for the left ear. Both reports indicate that the examinations were performed according to the Office's standards for evaluating hearing loss.² The Board finds that these opinions are of equal weight as they are equally well rationalized. Therefore, a conflict exists on the issue of whether appellant sustained more than a 17 percent left ear hearing loss and whether he sustained a ratable right ear hearing loss. The case, therefore, shall be remanded for referral to an appropriate impartial medical specialist, accompanied by a statement of accepted facts and the complete case record, for a report addressing those issues. After such further development as deemed necessary, the Office shall issue a *de novo* decision.

¹ 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

² *See George L. Cooper*, 40 ECAB 296, 302 (1988); Federal (FECA) Procedure Manual, Part -- 3, Medical, *Schedule Awards*, Chapter 3.0700.4(b) Exhibit 3 (October 1990); American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. rev., 1995).

The decisions of the Office of Workers' Compensation Programs dated November 1 and May 24, 1999 are set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
May 18, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member