

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALTON M. WILLIAMS and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Warner Robins, GA

*Docket No. 01-421; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than a two percent permanent loss of hearing in the left ear, for which he received a schedule award and whether he sustained any ratable hearing loss in the right ear.

On October 6, 1997 appellant, then a 76-year-old retired mechanic/engineer, filed an occupational disease claim alleging that his hearing loss resulted from factors of his employment. Appellant stated that he first realized that his condition was caused or aggravated by his employment on July 7, 1972. The employing establishment indicated that appellant retired on August 11, 1976.¹

Appellant noted that he was exposed to hazardous noise from May 29, 1952 to December 18, 1975 in his various aircraft and mechanical engineering positions.

An October 1, 1968 audiogram indicated that testing for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 20, 30, 30 and 15, respectively, while testing for the left ear revealed decibel losses of 30, 25, 25 and 25. An October 9, 1975 audiogram, at the same frequencies, showed decibel losses for the right ear at 10, 35, 25 and 25, respectively, while testing for the left ear revealed decibel losses of 15, 40, 35 and 15.

The Office of Workers' Compensation Programs requested that its medical adviser examine the physical examinations and hearing screenings during appellant's employment to ascertain whether there was any indication of a hearing loss.

In a report dated May 19, 2000, the Office medical adviser indicated that the September 1975 preretirement audiogram was consistent with mainly high frequency hearing loss in excess of normal aging. The adviser concluded that the employing establishment should have been alerted to the possibility of a work-related hearing loss in September 1975.

¹ The initial claim form stated that appellant retired in December 1975. However, subsequent documentation confirmed the August 11, 1976 date.

In a letter dated June 1, 2000, the Office referred appellant, a statement of accepted facts, the medical record, audiograms and exposure information to Dr. Thomas Crews, a Board-certified otolaryngologist, for otologic examination and audiologic evaluation.

In a report dated June 26, 2000, Dr. Crews indicated that appellant was exposed to significant shop noise during his 23 years on the job. Dr. Crews stated that appellant's hearing test showed bilateral symmetrical low, mid-range and high frequency sensorineural hearing loss with loss of discrimination of 80 percent in the right ear and 84 percent in the left ear. He opined that appellant's hearing loss was directly related to his federal employment. An accompanying June 16, 2000 audiogram, taken on Dr. Crews' behalf, reported that testing for appellant's right ear revealed decibel losses of 40, 40, 55 and 65, by air conduction respectively, while testing for the left ear revealed decibel losses of 45, 55, 60 and 60, respectively.

In a June 30, 2000 decision, the Office vacated its prior decision accepting appellant's claim for bilateral sensorinerual hearing loss. Appellant filed a claim for a schedule award on October 7, 2000.²

In a July 3, 2000 report, the Office referred Dr. Crews' report and case record to the Office medical adviser who reviewed the May 19, 2000 report and Dr. Crews' June 16, 2000 report and concluded that appellant did seem to have a work-related hearing loss. He noted that since "noise induced hearing loss does not progress after removal from hazardous noise source (attached FECA procedure), it seems appropriate to use the preretirement audiogram of September 10, 1975 for purposes of schedule award." Dr. Crews reported that, based on the review of the 1975 audiogram, appellant had not sustained any ratable hearing loss in the right ear and had a two percent monaural loss in the left ear.

In a decision dated August 29, 2000, the Office granted appellant's claim for a schedule award for a two percent permanent impairment of the left ear. The award was for 1.04 weeks of compensation from June 16 to 23, 2000.

The Board finds that this case is not in a posture for decision.

The Federal Employees' Compensation Act³ schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule. The Act, however, does not specify the manner by which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.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*

² Appellant's claim was originally denied on April 6, 1998. Appellant requested an oral hearing on April 20, 1998, which was held on October 28, 1998. In a March 8, 1999 decision, the hearing representative affirmed the Office's April 6, 1998 decision. Appellant requested reconsideration on March 2, 2000.

³ 5 U.S.C. § 8107.

⁴ *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

(4th ed. 1993).⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency 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 hearing loss is determined by calculating the loss in each ear using the formula for monaural hearing 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.⁹

In addition, the Office’s procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.¹⁰ The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association, or state licensure as an audiologist.¹¹

In this case, the Office medical adviser did not calculate appellant’s schedule award based on the audiogram dated June 16, 2000, which was performed on behalf of Dr. Crews. Rather, the Office medical adviser reviewed an earlier audiogram dated September 10, 1975 taken by the employing establishment almost a year prior to appellant’s retirement on August 11, 1976.

Although the Office’s medical adviser may review any audiogram of record¹² in determining which one most accurately reflects appellant’s employment-related hearing loss, the Office should not arbitrarily select one audiogram without explanation.¹³ Board precedent contemplates that the Office will give rationale for selecting one audiogram over another or, in the alternative, have another evaluation made of appellant’s hearing to resolve the inconsistency.¹⁴

Office procedures contemplate that, while noise-induced hearing loss does not typically progress after exposure to noise ceases, an Office medical adviser will provide a well-rationalized opinion for selecting one audiogram over another in a situation where a nonratable

⁵ 20 C.F.R. § 10.404.

⁶ A.M.A., *Guides*, 224-25 (4th ed. 1993).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Daniel C. Goings and Richard Beggs*, *supra* note 4.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

¹³ *See Joshua A. Holmes*, 42 ECAB 231 (1990).

¹⁴ *See John C. Messick*, 25 ECAB 333 (1974).

hearing loss is shown on an audiogram soon after noise exposure ceases while a second audiogram shows a ratable loss.¹⁵

In this case, the only explanation given by the Office medical adviser for selecting the September 10, 1975 audiogram, taken before appellant retired, is that “since noise-induced hearing loss does not progress after removal from hazardous noise source (attached FECA procedure), it seems appropriate to use the preretirement audiogram of September 10, 1975 for purposes of the schedule award.” The record reflects that appellant did not retire until August 11, 1976, almost a year after the September 10, 1975 audiogram. Dr. Crews did not explain why appellant would not have an increased loss given his exposure to further noise from the employing establishment. Therefore, the record is insufficiently developed with regard to which audiogram most accurately reflects appellant’s employment-related hearing loss.

Consequently, the case must be remanded for the Office to obtain a reasoned medical opinion regarding which audiogram most accurately reflects appellant’s employment-related hearing loss. Following this and other development as deemed necessary, the Office shall issue a *de novo* decision.¹⁶

The August 29, 2000 decision of the Office of Workers’ Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
November 6, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁵ *Id.*

¹⁶ *Robert F. Hart*, 36 ECAB 186 (1984).