

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP A. CHACON and UNITED STATES AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 01-684; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On August 25, 1998 appellant, then a 37-year-old machine tool operator, filed a notice of occupational disease and claim for compensation alleging that he sustained hearing loss as a result of exposure to hazardous noise in the performance of duty. Appellant stated that from 1983 until the present he was constantly exposed to noise from grinders, pneumatic hand tools and an overhead conveyor system. In support of his claim, appellant submitted the results of the annual audiograms administered as a condition of his employment, dating from July 3, 1983 to November 9, 1999.

By letter dated January 12, 2000, the Office of Workers' Compensation Programs advised appellant that his claim for a hearing loss due to his employment-related noise exposure had been accepted. To determine the extent of appellant's hearing loss, the Office referred appellant, together with a statement of accepted facts, for evaluation by Dr. Susan A. Marenda, a Board-certified otolaryngologist. In a report dated November 30, 1999, Dr. Marenda stated that physical examination revealed normal acoustic reflexes and tympanometry. Dr. Marenda reported audiometric test results, also performed on November 30, 1999 and opined that appellant suffered from left moderate mid to high-frequency sensorineural hearing loss, and right mild mid to high-frequency sensorineural hearing loss, compatible with employment-related noise exposure. Due to the asymmetrical nature of appellant's hearing loss, Dr. Marenda ordered magnetic resonance imaging to rule out acoustic neuroma and the results were normal. Dr. Marenda recommended a trial of amplification with a hearing aid for appellant's left ear.

An audiogram dated November 30, 1999, which was submitted along with Dr. Marenda's report, indicated testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed in the right ear: losses of 10, 15, 20 and 25 decibels (dBs) respectively; and in the left ear: losses of 20, 25, 30 and 40 dBs respectively.

An Office medical adviser reviewed appellant's November 30, 1999, audiogram, as well as Dr. Marena's complete report, and applied the Office's standardized procedures to calculate a 5.6 percent monaural hearing loss in the left ear, and a nonratable hearing loss in the right ear. He reported that appellant's left monaural hearing loss was due in part to the conditions of his federal employment, and authorized the purchase of a hearing aid as recommended by Dr. Marena.

In a decision dated May 22, 2000, the Office found that appellant was not entitled to a schedule award as the medical evidence of record failed to establish that he sustained a ratable hearing loss. The Office further found that appellant was not entitled to medical benefits as the weight of the medical evidence established that he would not benefit from hearing aids.

The Board has duly reviewed the case record in the present appeal and finds that this case must be reversed.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.¹ 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 determinations is a matter which rests in the sound discretion of the Office.² The Office has adopted by regulation, 20 C.F.R. § 10.404, the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz cycles per second. The losses at each frequency are added up and averaged and a "fence" of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in 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.

In the present case, contrary to the Office's findings, the medical evidence, in particular the reports of Office referral physician Dr. Marena and the Office medical adviser, support a ratable hearing loss in the left ear of 5.6 percent, and further support the authorization of a hearing aid for the left ear. The Board further notes that there is no contrary medical evidence of record. Accordingly, the decision of the Office must be reversed and the case returned to the Office for payment of an appropriate schedule award and authorization of a hearing aid for the left ear.

¹ 5 U.S.C. § 8107.

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

³ See A.M.A., *Guides* 224 (4th ed. 1993).

The May 22, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
October 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member