

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA K. CUMMINGS and GENERAL SERVICES ADMINISTRATION,
FEDERAL CENTER, Fort Worth, TX

*Docket No. 01-170; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for hearing loss.

On April 29, 1999 appellant, then a 44-year-old property manager, filed a claim alleging that she sustained permanent hearing loss while in the performance of duty on December 10, 1998 when a scooter backfired outside the employing establishment building causing a sharp pain to her right ear. She did not stop work.

Accompanying appellant's claim was a maintenance log, which indicated that a scooter was repaired on December 10, 1998.

By letter dated May 12, 1999, the Office requested additional medical evidence from appellant, stating that the initial information submitted was insufficient to establish an injury.

In response, appellant submitted a June 2, 1999 report from Dr. Scott Pulliam, a Board-certified family practitioner, who noted that appellant experienced ringing in her ear for five to six weeks after the work incident. He treated appellant on February 8, 1999 and diagnosed unilateral tinnitus related to acoustic trauma. Dr. Pulliam recommended that appellant be evaluated by an audiologist.

In a June 24, 1999 decision, the Office notified appellant that her claim had been accepted for tinnitus. Thereafter, appellant was examined by an audiologist who indicated that appellant exhibited perfectly normal acuity in her right ear, with minimal loss of 25 dB at the level of 4,000 kHz and 6,000 kHz. He added that appellant's hearing loss was not presently handicapping.

On February 22, 2000 appellant filed a claim for a schedule award.

By letter dated May 26, 2000, the Office referred appellant to Dr. Howard L. Shaffer, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Shaffer with a statement of accepted facts, available exposure information, and copies of all medical reports and audiograms.

Dr. Shaffer evaluated appellant on June 26, 2000 and audiometric testing was conducted on June 19, 2000. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 5, 10, 10 and 10 decibels; left ear 5, 10, 10 and 10 decibels. Dr. Shaffer determined that appellant showed normal hearing bilaterally and opined that the noise exposure described could cause the tinnitus appellant experienced. Dr. Shaffer state that appellant had no binaural hearing loss and could return to her employment without restrictions.

On August 12, 2000 an Office medical adviser reviewed Dr. Shaffer's report and the audiometric test of June 19, 2000. He concluded that appellant sustained no significant hearing loss in either ear. 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 June 19, 2000 audiology test.

By decision dated August 25, 2000, the Office determined that the hearing loss was employment related but not severe enough to be considered ratable for purposes of a schedule award.

The Board finds the Office properly denied appellant's claim for a schedule award for 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 is a matter, which 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, *Guides to the Evaluation of Permanent Impairment* using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. 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

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).

loss.⁴ The Board has concurred in the Office's adoption of this standard for evaluation hearing loss for schedule award purposes.⁵

In addition, the federal procedure manual requires that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.⁶ 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 (ASHA) or state licensure as an audiologist.⁷

An Office medical adviser applied the Office's standardized procedures to the June 19, 2000 audiogram performed for Dr. Shaffer. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 5, 10, 10 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 (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 right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 5, 10, 10 and 10 respectively. These decibels were totaled at 35 and were divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 15 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 hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Shaffer's report and the June 19, 2000 audiogram. The result is a zero percent binaural hearing loss.⁸

⁴ Page 166 (4th ed. 1994).

⁵ See *Daniel C. Goings*, *supra* note 2.

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

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

⁸ This decision does not affect appellant's entitlement to medical benefits for the accepted employment injury.

The August 25, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member