

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN M. FERRITTO and DEPARTMENT OF THE NAVY,
NAVY CONSTRUCTION BATTALION CENTER, Port Hueneme, CA

*Docket No. 01-1867; Submitted on the Record;
Issued December 27, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

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

On November 24, 1999 appellant, then a 56-year-old research structural engineer, filed an occupational disease claim (Form CA-2), alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He stated that he first became aware that he had a hearing loss problem in June 1999 and related it to his employment in October 1999. The employing establishment stated that appellant was last exposed to the conditions alleged to have caused his hearing loss in approximately 1990.

Accompanying the claim, the employing establishment submitted, among other things, appellant's work history, a statement from his supervisor concurring with appellant's statements, a June 14, 1999 audiogram, a June 14, 1999 x-ray of appellant's sinuses and June 14, 1999 office notes by Dr. Clinton J. LaGrange, a Board-certified otolaryngologist.

By letter dated February 17, 2000, the Office requested detailed factual and medical information from appellant and the employing establishment.

On February 29, 2000 the Office received appellant's response to the February 17, 2000 letter accompanied by a February 1, 2000 audiogram.

On April 4, 2000 the record was supplemented with appellant's job description, work history and a personnel paper showing that he voluntarily retired effective February 2, 2000.

On June 22, 2000 the Office referred appellant, along with the case record and a statement of accepted facts to Dr. Arthur S. Peters, a Board-certified otolaryngologist, for an examination and evaluation of medical records.

On July 25, 2000 the record was supplemented with Dr. Peters' July 17, 2000 report of his examination of appellant that day and the July 11, 2000 report of audiologic evaluation performed for Dr. Peters on July 11, 2000. In his report Dr. Peters stated that: "It is my opinion that [appellant's] hearing loss is secondary to his occupational noise exposure, having caused acoustic trauma and a high frequency hearing loss." He diagnosed bilateral, mild-to-moderately severe sensorineural hearing loss in the high frequencies.

Dr. Peters found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz; in the right ear, decibel levels of 25, 5, 10 and 10, respectively; and in the left ear, decibel levels of 25, 15, 15 and 35, respectively.

By decision dated July 26, 2000, the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On July 26, 2000 the Office referred the record to a district medical adviser for an opinion on whether appellant was entitled to a scheduled award. In an August 21, 2000 report, the district medical adviser concurred with Dr. Peters' findings. He applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Peters to determine that appellant had a nonratable hearing loss bilaterally. The district medical adviser indicated the date of maximum medical improvement was July 11, 2000.

By decision dated September 11, 2000, the Office denied appellant's claim for a scheduled award. The Office determined that appellant's hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees' Compensation Act.

Appellant subsequently requested an oral hearing before an Office hearing representative. After a discussion between a hearing representative and appellant, appellant decided he wanted a review of the written record. He submitted a March 29, 2001 reevaluation report by Dr. Peters and an audiogram taken that day. Dr. Peters stated that tests performed revealed that appellant has vertigo which is not related to his loss of hearing.

By decision dated June 7, 2001 and finalized June 24, 2001, the hearing representative, after a review of the written record, affirmed the September 11, 2000 decision. The hearing representative stated that Dr. Peters found that appellant's vertigo was not work related and that Dr. Peters did not include tinnitus in his diagnosis or find the condition related to appellant's noise exposure.

The Board finds that appellant does not have a compensable hearing loss.

The schedule award provision of the Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ 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.⁵ 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.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

The Office medical adviser applied the Office’s standardized procedures to the July 11, 2000 audiogram performed for Dr. Peters. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 25, 5, 10 and 10 decibels respectively. These losses were totaled at 50 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 12.5 decibels. The average of 12.5 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 losses of 25, 15, 15 and 35 decibels respectively. These losses were totaled at 90 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels, as discussed above, to equal 0, which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the 0 by 5 to equal 0, which was added to 0. Finally the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the district medical adviser properly applied the appropriate standards to the findings provided in Dr. Peters’ report dated July 17, 2000 and the

³ *Id.*

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted* (issued August 13, 2002).

accompanying July 11, 2000 audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above.¹⁰

The decision dated June 7, 2001 and finalized June 14, 2001 and the decision dated September 11, 2000 of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
December 27, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

¹⁰ The Board notes that the medical evidence submitted does not support that appellant's vertigo is work related. The Board has repeatedly held that there is no basis for paying a scheduled award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing. *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984).