

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANA E. LIBBY and DEPARTMENT OF THE NAVY,  
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 01-2200; Submitted on the Record;  
Issued July 1, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant established that his hearing loss is causally related to his accepted employment exposure.

Appellant, a 63-year-old retired Department of the Navy civilian who had worked as a machinist and in other civilian capacities, filed an occupational claim on October 31, 2000 alleging that he sustained a hearing loss as a result of his employment duties. He identified April 1, 1991 as the date he first became aware of his employment-related hearing loss. Reports from the employing establishment were submitted which denoted a threshold shift in appellant's hearing. In reports dated February 16, 2000 and February 16, 2001, physicians from the employing establishment opined that appellant had insufficient hearing loss beyond presbycusis (aging) norms. After initial development of the record, the Office of Workers' Compensation Programs referred appellant for examination by Dr. Harry H. Payton, an otolaryngologist. In a report of appellant's March 29, 2001 examination, Dr. Payton diagnosed a high frequency sensorineural hearing loss and indicated that appellant's hearing loss was not due to noise exposure encountered during his federal civilian employment. Audiometric test results of the March 29, 2001 examination were provided.

In a decision dated July 17, 2001, the Office denied compensation based on appellant's failure to establish a causal relationship between his hearing loss and his employment-related noise exposure.

The Board finds that appellant failed to establish that his hearing loss is causally related to his accepted employment exposure.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event,

incident or exposure caused an injury.<sup>1</sup> Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work for which he claims compensation is causally related to the accepted injury.<sup>2</sup>

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office denied compensation based on Dr. Payton's report of appellant's March 29, 2001 examination. Dr. Payton diagnosed a high frequency sensorineural hearing loss but found that it was not due to appellant's accepted occupational exposure to noise.

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, 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. This would provide the percentage of hearing loss for each ear. To determine the percentage for a binaural hearing loss, 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 the percentage of binaural hearing loss.<sup>5</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.

The most recent audiometric testing of record is the March 29, 2001 testing provided by Dr. Payton. At the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 10, 10, 20 and 30 in the left ear and 10, 15, 20, 30 in the right ear, respectively. When the decibels in the left ear are totaled to equal 70 and divided by 4, the average hearing loss at those cycles is 17.5 decibels. When the average of 17.5 decibels is reduced by 25 decibels (the first 25 decibels are discounted as discussed above) to equal 0 which is multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. When the decibels in the

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<sup>1</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (e) ("occupational disease or illness" and "traumatic injury" defined).

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment*, pp. 246-50 (5<sup>th</sup> ed. 2000).

right ear are totaled to equal 75 and divided by 4, the average hearing loss at those cycles is 18.75 decibels. When the average of 18.75 decibels is reduced by 25 decibels to equal 0, which when multiplied by the established factor of 1.5, computes to a 0 percent loss of hearing for the right ear. Accordingly, the testing revealed a zero percent binaural hearing loss. However, with regard to causal relationship, Dr. Payton found that appellant's hearing loss was not due to his accepted noise exposure.

The Office properly determined that appellant's hearing loss was not causally related to his accepted employment exposure as Dr. Payton negated a causal relationship between his findings on examination and appellant's history of occupational noise exposure.

The July 17, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 1, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member