

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSIE PADILLA and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX

*Docket No. 01-1998; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On June 23, 1999 appellant, then a 49-year-old shop service center chief, filed a claim alleging that she sustained permanent hearing loss while in the performance of duty. She became aware of her condition on January 24, 1989. Appellant did not stop work.

The employing establishment submitted an employment history noting that from 1979 to 1984 appellant was a supply clerk and was not exposed to hazardous noise from 1984 to 1988. She was an industrial engineering technician and was not exposed to hazardous noise; from 1988 to 1993 appellant worked in the B-52 production count unit where she spent 90 percent of her day exposed to hazardous noise from aircraft and wore hearing protection; and from 1993 to 1995 appellant work in the T-38 production support unit where she spent three to four hours in an administrative area and the remainder in the shops where she was exposed to hazardous noise.

Thereafter, appellant submitted employing establishment audiograms from September 1981 to November 1999, which revealed progressive mild high frequency hearing loss in both ears. In her statements dated July 23, 1999, appellant indicated that she experienced a ruptured eardrum in 1989. She noted that she was issued earmuffs when working on the B-52 aircraft line and wore them for hearing protection.

In a statement of accepted facts, the Office noted that from February 1993 to January 1998 appellant was exposed to hazardous noise from pneumatic guns, MD3 generators, AGE equipment, man lifts, engine runs, riveting air guns and equipment engines.

Appellant submitted a report from her treating physician, Dr. Michael H. Bertino, a Board-certified otolaryngologist, dated June 24, 1999. He had treated appellant since 1989 for hearing loss which appellant attributed to chronic noise exposure at work. Dr. Bertino noted appellant was treated also for chronic sinus problems and recurrent upper respiratory infections.

By letter dated July 8, 1999, the Office referred appellant to Dr. Eduardo Madiedo, Jr., a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Madiedo with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms. In a memorandum the Office noted that the audiologist for the second opinion physician questioned appellant's veracity during the examination and wanted to retest appellant. She did not reschedule the audiogram.

On August 10, 1999 appellant filed a claim for a schedule award. She submitted an attending physician's report from Dr. Bertino dated August 12, 1999, who diagnosed her with high frequency sensorineural hearing loss in both ears due to excess noise exposure at the employing establishment.

On November 16, 1999 the employing establishment's physician, Dr. Marcel Dionne, a Board-certified otolaryngologist, submitted a memorandum noting that he reviewed appellant's medical records and hazardous noise exposure and determined that she sustained a mild high frequency sensorineural hearing loss in both ears. However, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (A.M.A., *Guides*) this loss is not ratable.

In a letter dated December 10, 1999, appellant was referred to an audiologist for an otological examination. In a report dated December 27, 1999, the audiologist noted that the results of the examination were inconsistent and the reliability was fair at best.

By letter dated January 28, 2000, the Office referred appellant to Dr. Wesley Krueger, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided him with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Krueger performed an otologic evaluation of appellant on February 14, 2000 and audiometric testing was conducted on his behalf, the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 10, 10, 15 and 20 decibels; left ear 10, 10, 15 and 10 decibels. Dr. Krueger determined that appellant had bilateral high frequency sensorineural hearing loss which was felt to be secondary to noise exposure arising from her employment.

On March 10, 2000 an Office medical adviser reviewed Dr. Krueger's report and the audiometric test of February 14, 2000. 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 February 14, 2000 audiology test. He determined that appellant had a zero percent monaural hearing loss in the left ear and zero percent monaural hearing loss in the right ear and no binaural hearing loss. The medical adviser noted reviewing the medical record and concluded that the February 14, 2000 audiogram was used for adjudication as it met all Office standards and was part of Dr. Krueger's evaluation.

By decision dated March 10, 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.

In a letter dated April 5, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on April 24, 2001. Appellant submitted three reports from Dr. Bertino dated December 17, 1999, April 19 and May 1, 2001 with an accompanying audiogram; a letter from Dr. Eddie M. Cortez, a dentist, dated April 23, 2001; a duplicative copy of the employing establishment's memorandum regarding appellant's noise exposure; and duplicative employing establishment audiograms dated January 24 and February 7, 1989 and April 4, 1995.

In a decision dated June 21, 2001, the hearing representative affirmed the decision of the Office dated March 10, 2000.

The Board finds that 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 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. 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 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 (FECA) Procedure Manual requires that all claims for hearing loss due to its acoustic trauma, requires 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

¹ 5 U.S.C. §§ 8101-8193, § 8107(c)

² *Danniel 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).

⁴ P. 166 (4th ed. 1994).

⁵ *See Goings*, *supra* note 2.

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

audiology 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 February 14, 2000 audiogram performed for Dr. Krueger. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 10, 10, 15 and 20 respectively. These decibels were totaled at 55 and were divided by 4 to obtain an average hearing loss at those cycles of 13.75 decibels. The average of 13.75 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 10, 10, 15 and 10 respectively. These decibels were totaled at 45 and were divided by 4 to obtain the average hearing loss at those cycles of 11.25 decibels. The average of 11.25 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. Krueger's report and the February 14, 2000 audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above.

Appellant submitted several reports from Dr. Bertino and Dr. Cortez indicating that she was treated for bilateral high frequency sensorineural hearing loss due to her hazardous noise exposure at work. Additionally, the physicians notes that appellant was being treated for severe ear pain secondary to myofascial pain syndrome and temporomandibular joint pain. However, the Board notes that the Office accepted that appellant sustained bilateral high frequency sensorineural hearing loss but indicated that her hearing loss has not been shown to be ratable. Appellant submitted an audiogram dated April 26, 2001 performed on behalf of Dr. Bertino. However, this audiogram failed to reveal a ratable hearing loss.⁸

The Board finds that, considering the report of Dr. Krueger as well as the April 26, 2001 audiogram performed for Dr. Bertino, the result is zero percent monaural hearing loss and zero percent binaural hearing loss.

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

⁸ Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 25, 10, 10 and 15 respectively. These decibels were totaled at 60 and were divided by 4 to obtain an average hearing loss at those cycles of 15 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 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 15, 10, 10 and 5 respectively. These decibels were totaled at 40 and were divided by 4 to obtain the average hearing loss at those cycles of 10 decibels. The average of 10 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 June 21, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 8, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member