

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE GREASON, JR. and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Houston, TX

*Docket No. 01-2214; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a schedule award for his employment-related hearing loss; and (2) whether the Office of Workers' Compensation Programs properly denied authorization for hearing aids.

On March 5, 2001 appellant, then a 50-year-old Deputy U.S. Marshal, filed an occupational disease claim for hearing loss.

The Office referred appellant to Dr. Jerome Kosoy, an otolaryngologist, for evaluation. On April 16, 2001 audiometric testing at 500, 1,000, 2,000 and 3,000 Hertz revealed hearing threshold levels of 15, 10, 5 and 5 decibels, respectively, in the right ear and 15, 15, 10 and 15 decibels, respectively, in the left. The audiometric test results were judged valid and representative of appellant's hearing sensitivity. Dr. Kosoy diagnosed noise-induced sensorineural hearing loss and concluded that the loss was due to noise exposure encountered in appellant's federal employment. Speech reception thresholds were at 5 decibels and auditory discrimination scores were at 92 percent in each ear. Dr. Kosoy recommended no hearing aids.

On May 21, 2001 an Office medical adviser reviewed the statement of accepted facts and Dr. Kosoy's findings. The medical adviser explained that appellant's hearing loss should be judged by the audiometry obtained on April 16, 2001 because it was the most recent evaluation, it met all of the Office's standards and it was an integral part of the evaluation of the consulting otologist. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), the Office medical adviser determined that appellant's binaural hearing loss was zero percent.

On May 29, 2001 the Office accepted appellant's claim for noise-induced hearing loss.

In a decision dated June 6, 2001, the Office denied a schedule award on the grounds that appellant's hearing loss was not severe enough to be considered ratable. The Office further found that the weight of the medical evidence established that appellant would not benefit from hearing aids.

The Board finds that appellant is not entitled to a schedule award for his employment-related hearing loss.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides*³ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

According to the standards set forth in the applicable edition of the A.M.A., *Guides*.⁵ Hearing threshold levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 Hertz are added up for each ear separately and compared to Table 11-1, page 247, of the A.M.A., *Guides* to determine the percentage of monaural hearing impairment. Impairment values for each ear are then compared to Table 11-2, page 248, to determine the percentage of binaural hearing loss.⁶

If the sum of the hearing levels at 500, 1,000, 2,000 and 3,000 Hertz is 100 or less, no impairment rating is assigned since, according to data cited by the A.M.A., *Guides*, there is no change in the ability to hear everyday sounds under everyday listening conditions.⁷

The Office medical adviser properly applied these standardized procedures to the audiogram obtained on April 16, 2001. Hearing levels recorded at 500, 1,000, 2,000 and 3,000 Hertz totaled 35 decibels for the right ear and 55 decibels for the left. Because the sum of the hearing levels in each ear is less than 100, no impairment is considered to exist in appellant's ability to hear everyday sounds under everyday listening conditions. Under Table 11-1, page 247, these sums represent an impairment of zero percent.

The Office accepts that appellant's federal civilian employment exposed him to hazardous levels of noise and that this exposure caused a high-frequency sensorineural hearing loss. This hearing loss is not severe enough, however, to constitute an impairment under the A.M.A., *Guides*. The Office, therefore, properly denied a schedule award for permanent impairment on the grounds that appellant's hearing loss was not ratable.⁸

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989).

⁵ 20 C.F.R. § 10.404 (1999). The Board has concurred in the Office's adoption of the A.M.A., *Guides* for evaluating hearing loss for schedule award purposes. *E.g.*, *Danniel C. Goings*, 37 ECAB 781 (1986).

⁶ A.M.A., *Guides* at 247 (5th ed. 2001).

⁷ *Id.* at 250.

⁸ A physician's comment in 1995 that appellant had a "severe" high-frequency loss in the left ear was based on hearing threshold levels recorded at 4000, 6000 and 8000 Hertz and not on the standards set forth in the A.M.A.,

The Board also finds that the Office properly denied authorization for hearing aids.

Section 8103(a) of the Act⁹ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. The Office must, therefore, exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.¹⁰

Appellant submitted no prescription or recommendation for hearing aids by a qualified physician. In fact, Dr. Kosoy, the consulting otolaryngologist, who examined appellant on April 16, 2001, reported that hearing aids were not recommended. Further, with no practical impairment in appellant's ability to hear everyday sounds under everyday listening conditions, there is no evidence to show that hearing aids would likely cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. Under these circumstances, the Office acted well within its discretion under section 8103(a) to deny authorization for hearing aids.

The June 6, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 6, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Guides.

⁹ 5 U.S.C. § 8103(a).

¹⁰ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).