

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS F. MATEJA and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY & INSPECTION SERVICE, CHICAGO DISTRICT OFFICE,
Lombard, IL

*Docket No. 02-1424; Submitted on the Record;
Issued November 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a ratable hearing loss in the performance of duty.

On August 27, 2001 appellant, then a 55-year-old supervisory compliance officer, filed a claim for a loss of hearing due to noise exposure at work. He claimed that he had been exposed to hazardous levels of noise while assigned to meat slaughter plants and poultry processing plants as an inspector from June 1981 to August 2001.

In a March 12, 2002 decision, the Office of Workers' Compensation Programs found that appellant had sustained a hearing loss in the performance of duty. The Office further found, however, appellant's hearing loss was not sufficiently severe to be considered ratable. The Office therefore denied appellant's claim for a schedule award for a hearing loss.

The Board finds that appellant's hearing loss is not ratable and that he is therefore not entitled to a schedule award.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ 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.² 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.³ The remaining amount is multiplied by a factor of

¹ A.M.A., *Guides* at 250 (5th ed. 2001)

² *Id.*

³ *Id.*

1.5 to arrive at the percentage of monaural hearing loss.⁴ 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.⁵ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁶

The Office referred appellant to Dr. Steven J. Millen, a Board-certified otolaryngologist, for an examination to determine the cause and extent of appellant's hearing loss. In a February 7, 2002 report, Dr. Millen diagnosed mild bilateral, high frequency, sensorineural hearing loss with mild asymmetry with a greater loss in the right ear. He noted that the record submitted to him showed that appellant had no hearing loss when he left military service. Dr. Millen commented, however, that since appellant sustained significant injuries from a grenade blast, there was a possibility that a mild hearing loss could have occurred at that time. He stated that the asymmetry of the hearing loss would more likely have occurred from a concussive injury rather than noise exposure. Dr. Millen indicated that appellant had an extremely mild hearing loss with evidence of a slight loss in the left ear and commented that noise exposure could very well be a contributing factor to appellant's hearing loss. He submitted the results of an audiogram performed as part of appellant's examination.

Section 8107 of the Federal Employees' Compensation Act⁷ 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 loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.⁸ 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.⁹

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 the

⁴ *Id.*

⁵ *Id.*

⁶ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002).

⁷ 5 U.S.C. § 8107(c).

⁸ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁹ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

percentage of binaural hearing loss.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.¹¹

The Office medical adviser correctly applied the Office's standard procedures to the audiogram obtained by Dr. Millen. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 5 and 15 respectively for a total of 25 decibels. These losses were divided by 4 for an average hearing loss of 6.25 decibels. The average was reduced by 25 decibels (the first 25 decibels are deducted, as explain above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the right ear. Testing for the left ear at the same frequencies revealed decibel losses of 10, 5, 10 and 15 decibels respectively for a total of 40 decibels. These losses were divided by 4 for an average hearing loss of 10 decibels. The average was reduced by 25 decibels (as explained above) to equal 0 decibels which was multiplied by 1.5 to arrive at a 0 percent loss for the left ear. Therefore, under the standards used by the Office, appellant did not have a ratable hearing loss which would entitle him to a schedule award.

The decision of the Office of Workers' Compensation Programs, dated March 12, 2002, is hereby affirmed.

Dated, Washington, DC
November 22, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

¹⁰ p. 166 (5th ed. 2001).

¹¹ *Daniel C. Goings, supra* note 8.