

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. HAUER and DEPARTMENT OF THE ARMY,
PENNSYLVANIA NATIONAL GUARD, Annville, PA

*Docket No. 02-689; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing federal regulation² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office of Workers' Compensation Programs.⁴ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A.,

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.304.

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

Guides).⁶ 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.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹¹

On June 26, 2001 appellant, a 58-year-old automotive worker leader, filed a claim for benefits, alleging that he sustained a hearing loss/tinnitus causally related to factors of his federal employment. Appellant stated that he first became aware of his hearing conditions on January 14, 1998.

By letter dated July 16, 2001, the Office referred appellant and a statement of accepted facts to Dr. Clifford N. Steinig, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the August 7, 2001 audiogram for Dr. Steinig noted findings on audiological evaluation. At frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 10, 15, 5 and 15 decibels; left ear -- 0, 10, 5 and 20 decibels. In a report dated August 7, 2001, he reviewed the audiogram and concluded that appellant’s hearing test showed a binaural noise-induced sensorineural mild hearing loss due to a history of noise exposure, but found that the hearing loss was not severe enough to require hearing aids. He noted that appellant was complaining about severe tinnitus and stated that the patterns noted in the audiometric study of the high frequency loss goes along with the tinnitus appellant is complaining about. Dr. Steinig opined that the tinnitus was also the result of exposure to loud noise, but stated that there was very little, which could be offered regarding tinnitus other than consideration for biofeedback and a consultation with an audiologist.

On December 11, 2001 an Office medical adviser reviewed Dr. Steinig’s report and the audiogram taken for him and opined that appellant’s hearing loss was nonratable for schedule award purposes under the Office standards for evaluating hearing loss. Hearing aids and a further evaluation by a specialist were not recommended.

⁶ A.M.A., *Guides* at 250 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Donald E. Stockstad, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon.* granted (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

In a decision dated December 31, 2001, the Office accepted that appellant had an employment-related hearing loss but determined that appellant's hearing loss was insufficient to warrant a schedule award. The Office indicated that appellant was still entitled to medical treatment.

The Board finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.

The Office medical adviser applied the Office's standardized procedures to the August 7, 2001 audiogram performed for Dr. Steinig. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses of 10, 15, 5 and 15 decibels respectively. These decibels were totaled to 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 in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 0, 10, 5 and 20 respectively. These decibels were totaled at 35 and were divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 8.75 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 in the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office's medical adviser and the consulting audiologist determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser applied the proper standards to the findings as stated in Dr. Steinig's August 7, 2001 report and the accompanying August 7, 2001 audiogram performed on his behalf. This resulted in a calculation of a nonratable hearing loss as set forth above. Consequently, the Board finds that the Office properly determined that appellant did not sustain a ratable hearing loss caused by factors of his federal employment.

On appeal appellant contends that he is entitled to compensation for his tinnitus condition. The A.M.A., *Guides* allow for compensation for up to five percent for tinnitus in the presence of measurable hearing loss, if it is established that appellant has a ratable hearing loss.¹² However, in this case, appellant has not sustained a ratable hearing loss. The A.M.A., *Guides* also allow for an award for tinnitus under disturbances of vestibular function. However, no ratable permanent hearing loss has been identified or documented in the medical evidence. Lastly, appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity;¹³ however, there is no evidence of record that appellant sustained a loss of wage-earning capacity as a result of his tinnitus.

Since appellant has not demonstrated that his tinnitus caused or contributed to a ratable hearing loss and since appellant has not established that his tinnitus has caused vestibular

¹² A.M.A., *Guides* at 246 (5th ed. 2001); *Juan Trevino*, 54 ECAB ____ (Docket No. 02-1602, issued January 17, 2003).

¹³ *John T. Bradley*, 25 ECAB 348 (1974).

function disturbances or a loss of wage-earning capacity, there is no basis for paying appellant a schedule award for tinnitus.

The December 31, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.¹⁴

Dated, Washington, DC
April 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁴ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).