

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN R. FISHER and DEPARTMENT OF THE AIR FORCE,
McCONNELL AIR FORCE BASE, KS

*Docket No. 02-1731; Submitted on the Record;
Issued April 14, 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 its implementing regulation² 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.³

The Office of Workers' Compensation Programs evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ 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.⁵ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

On a claim form received by the Office on April 2, 2001, appellant, then a 46-year-old mechanic, alleged that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware that he had sustained a hearing loss on February 13, 2000.

By letter dated December 5, 2001, the Office referred appellant and a statement of accepted facts to Dr. Mohammad Zafar Iqbal, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the December 19, 2001 audiogram for Dr. Iqbal noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the following thresholds were reported: right ear -- 10, 5, 0 and 15 decibels; left ear -- 10, 0, 0 and 10 decibels. In a report dated the same day, Dr. Iqbal reviewed the audiogram and concluded that appellant's hearing test showed a binaural high frequency sensorineural hearing loss and tinnitus due to a history of noise exposure.

On December 28, 2001 an Office medical adviser reviewed Dr. Iqbal'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.

In a decision dated March 8, 2002, the Office accepted that appellant had an employment-related bilateral hearing loss but determined that appellant's hearing loss was not sufficient to warrant a schedule award.

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 December 19, 2001 audiogram performed for Dr. Iqbal. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing losses of 10, 5, 0 and 15 decibels respectively. These decibels totaled 30 and were divided by 4 to obtain the average

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *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).

hearing loss at those cycles of 7.5 decibels. The average of 7.5 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 cycles per second revealed decibel losses of 10, 0, 0 and 10 respectively. These decibels totaled 20 and were divided by 4 to obtain the average hearing loss at those cycles of 5 decibels. The average of 5 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. Iqbal's December 19, 2001 report, and the accompanying December 19, 2001 audiogram performed on his behalf. This resulted in a calculation of a nonratable hearing loss as set forth above. Thus, there is insufficient hearing loss to warrant a schedule award.

Regarding Dr. Iqbal's finding that appellant has tinnitus, the A.M.A., *Guides* states:

*"Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."*¹⁰

As appellant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus. Therefore, although appellant's claim for hearing loss was accepted and he is entitled to medical benefits related to this loss, his hearing loss is not now ratable under the Act. Consequently, appellant is not entitled to a schedule award.¹¹

¹⁰ A.M.A., *Guides* at 246.

¹¹ *Juan A. Trevino*, 54 ECAB ____ (Docket No. 02-1602, issued January 17, 2003).

The March 8, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member