

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT MONZO and DEPARTMENT OF THE NAVY,
NAVY CRANE CENTER, Lester, PA

*Docket No. 03-259; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has any ratable hearing loss entitling him to a schedule award.

On October 5, 1998 appellant, then a 48-year-old equipment specialist, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to noise exposure in his federal employment. The Office of Workers' Compensation Programs referred appellant to Dr. Herbert Kean, a Board-certified otolaryngologist, for an audiogram and otologic examination. Based on the December 21, 1998 report of Dr. Kean, the Office accepted appellant's claim for binaural noise-induced hearing loss. However, in a decision dated January 15, 1999, the Office found that appellant's hearing loss was insufficient to be ratable for purposes of a schedule award.

Appellant requested a hearing and submitted in support of his request a medical report dated March 8, 1999 from Dr. Thomas F. Flynn, a Board-certified otolaryngologist. In a decision dated December 22, 1999, an Office hearing representative determined that a conflict in medical opinion existed between Dr. Kean, the Office referral physician, and Dr. Flynn, appellant's treating physician, on the issue of whether appellant had a ratable hearing impairment. The Office referred appellant to Dr. David G. Ansel, a Board-certified otolaryngologist, to resolve the conflict in medical opinion.

Based on Dr. Ansel's March 15, 2000 audiogram and accompanying medical report, in a decision dated April 24, 2000, the Office denied appellant's claim for a schedule award on the grounds that he had no ratable hearing loss. Appellant requested an oral hearing, and in a decision dated February 28, 2001, an Office hearing representative vacated the Office's April 24, 2000 decision on the grounds that Dr. Ansel's audiogram lacked the date of calibration and, therefore, did not constitute a reliable test pursuant to Office procedures.

On remand the Office obtained the necessary calibration date information from Dr. Ansel's office and in a decision dated May 10, 2001, denied appellant's claim for a schedule award on the grounds that he had no ratable hearing loss.

By letter dated May 15, 2001, appellant requested an oral hearing before an Office representative. In a decision dated September 27, 2001, an Office representative found that the case was not in posture for a hearing, as the calibration date obtained from Dr. Ansel's office revealed that the testing equipment was calibrated more than a year before appellant's examination and, therefore, did not meet the Office specification requirements for calibration of audiometry equipment. The Office hearing representative set aside the Office's prior decision, and instructed the Office to refer appellant back to Dr. Ansel for an updated audiogram and otological evaluation.

Based on Dr. Ansel's November 7, 2001 audiogram and accompanying medical report, in a decision dated November 28, 2001, the Office denied appellant's claim for a schedule award on the grounds that he had no ratable hearing loss. Appellant requested an oral hearing, and in a decision dated July 23, 2002, an Office hearing representative affirmed the Office's prior determination denying appellant's claim for a schedule award.

The Board finds that appellant has no ratable hearing loss which would entitle him to a schedule award.

Section 8107 of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.¹ The Act does not, however, 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 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 industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴

In addition to this standard, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office's procedure manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric

¹ 5 U.S.C. § 8107(c).

² See *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 A.M.A., *Guides* at 246, 247 (5th ed. 2001).

and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association (ASHA); that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.⁵ The Office further advises that a certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the tests were conducted met the accreditation standards of the Professional Services Board of the ASHA (ANSI S3.6 (1969) and S.1 (1977)), respectively. The calibration standards require daily, monthly, quarterly and annual testing.⁶

In this case, the Office determined that there was a conflict in medical opinion between appellant's treating physician, Dr. Thomas Flynn, and the Office referral physician, Dr. Herbert Kean, and properly referred appellant for examination by Dr. Ansel, a Board-certified otolaryngologist and impartial medical specialist.⁷ Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.⁸ Therefore, upon determining that Dr. Ansel's audiometric equipment did not meet Office calibration standards, the Office properly referred appellant back to Dr. Ansel for an updated report.

In his supplemental report dated November 7, 2001, Dr. Ansel, the Board-certified otolaryngologist and impartial medical examiner, noted that a new audiogram was performed on equipment which was calibrated on April 11, 2001, and that the tests results were extremely reliable. He found that appellant had "some slight high frequency hearing loss, but from the point of view of speech reception thresholds and discrimination, his hearing was entirely normal." Dr. Ansel further stated that appellant's single frequency loss at 4,000 cycles per second is compatible with his long history of noise exposure but did not in any way affect his ability to perform any work tasks. The audiogram results accompanying Dr. Ansel's report were obtained on November 7, 2001 and are signed by audiologist Laura Berman, who stated that her equipment was calibrated on April 11, 2001 by Instrumentation Associates, in accordance with the ANSI and further noted that the test results were very reliable. Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.08 (September 1996).

⁶ *Id.*

⁷ Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. *H. Adrian Osborne*, 48 ECAB 556 (1997); *Lawrence C. Parr*, 48 ECAB 445 (1997).

⁸ *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Talmadge Miller*, 47 ECAB 673 (1996).

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁹ The Board finds that Dr. Ansel's supplemental opinion is sufficiently probative to merit the special weight accorded a referee examiner. The Office thus properly applied the A.M.A., *Guides* to the November 7, 2001 audiogram obtained by Dr. Ansel.

According to the A.M.A., *Guides*, 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.¹⁰ 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.¹¹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹² 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.¹³ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁴

On November 26, 2001 an Office medical adviser reviewed Dr. Ansel's findings and applied the Office's standardized procedures to the November 7, 2001 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 5 and 55, respectively. These decibels were totaled at 85 and divided by 4 to obtain the average hearing loss of 21.25 decibels. The average loss was reduced by the 25 decibel fence to equal 0, which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss for the right ear. This means that no impairment is presumed to exist in appellant's ability to hear, with his right ear, everyday sounds under everyday listening conditions. This is a nonratable hearing loss.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 10, 10, 5 and 60 decibels, respectively. These decibels were totaled at 85 and divided by 4 to obtain the average hearing loss of 21.25 decibels. The average loss was reduced by the 25 decibel fence to equal 0, which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss for the left ear. This means that no impairment under the A.M.A., *Guides* exists relative to appellant's ability to hear, with his left ear, everyday sounds under everyday listening conditions. This is a nonratable hearing loss. The Office thus correctly determined that appellant sustained no ratable hearing loss causally related to factors of his federal employment and is therefore not entitled to a schedule award.

⁹ *Mary A. Moultry*, 48 ECAB 566 (1997).

¹⁰ A.M.A., *Guides* at 246, 247 (5th ed. 2001).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *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).

The decisions of the Office of Workers' Compensation Programs dated July 23, 2002 and November 28, 2001 are hereby affirmed.

Dated, Washington, DC
April 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member