

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT STEWART and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 03-429; Submitted on the Record;
Issued April 15, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a two percent monaural hearing loss in his left ear for which he received a schedule award.

This case has previously been before the Board. Appellant, a transportation specialist born April 16, 1949, filed a notice of occupational disease on February 5, 1996 asserting that he sustained hearing loss as a result of hazardous noise exposure during his federal employment. Appellant initially worked as an aircraft mechanic and then technician, with hazardous noise exposure from 1971 until 1985, when he began working in an office setting.¹ By decision dated February 21, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that the evidence of record failed to establish that appellant's hearing loss occurred during the time frame asserted by appellant. The Office subsequently affirmed the February 21, 1997 decision on April 7, 1998 and denied merit review on July 7, 1998.

In an August 29, 2000 decision, the Board set aside the April 7, 1998 Office decision.² The Board found a conflict in medical opinion evidence as to whether appellant sustained a ratable loss of hearing after 1985, causally related to documented hazardous noise exposure prior to 1985 or to claimed noise exposure from 1985 to 1996. Dr. Donald Geeze, a Board-certified psychiatrist specializing in aerospace medicine, identified the period of appellant's hazardous noise exposure as being from 1971 to 1985; however, he noted that appellant's loss, when measured in 1986, was nonratable. He further noted that a 1996 audiogram demonstrated a 5.6 monaural loss and concluded that, as the majority of the loss occurred while working in hazardous noise, he recommended approval of the claim. Dr. Henry Mobley, a Board-certified otolaryngologist, opined in his report that noise-induced hearing loss ceases when exposure to excessive noise stops, such that there was no progression of hearing loss after the removal from

¹ Appellant filed a previous claim for binaural hearing loss from 1971 through January 1985, his last month of hazardous noise exposure; however, the binaural hearing loss was found to be unratable at that time.

² Docket No. 99-74.

the excessively noisy environment. Dr. Mobley opined that any hearing loss after January 1985 would not be job related after removal from hazardous noise exposure. Dr. Gerald Laursen, a Board-certified otolaryngologist, diagnosed appellant with noise-induced sensorineural hearing loss due in part or all to noise exposure encountered in his federal civilian employment and concurred with Dr. Mobley that any hearing loss after 1985 would not be due to appellant's employment. The Board remanded the case to the Office for further development. The facts of the case are set forth in the Board's prior decision and incorporated herein by reference.

By decision dated June 8, 2001, the Office accepted appellant's occupational disease claim for two percent monaural hearing loss of the left ear. The Office based its decision on the report of Dr. Robert Thiltgen, a Board-certified otolaryngologist, received June 6, 2001 and the results of the audiometric test performed at his direction on April 6, 2001. Dr. Thiltgen that appellant sustained high frequency sensorineural loss of the left ear related to significant noise exposure in the course of his federal employment beginning October 15, 1971. He reported that audiometric testing performed on April 6, 2001 revealed a hearing loss in excess of what would normally be predicated on the basis of presbycusis. Dr. Thiltgen diagnosed appellant with a sensorineural hearing loss and determined that he reached maximum medical improvement on April 6, 2001. He further concluded that hearing aids were not recommended.

On October 18, 2002 the Office issued a schedule award for two percent permanent hearing loss of the left ear. The award ran for 1.04 weeks from April 3 to April 10, 2001.

The Board finds that appellant has no more than a two percent monaural hearing loss in the left ear.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.³ Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.⁵ However, as a matter of administrative practice, the Board has stated: "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."⁶

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁷ Using

³ 5 U.S.C. § 8107.

⁴ *Id.* at § 8107(c)(19).

⁵ *Andrew Arron, Jr.*, 48 ECAB 141 (1996).

⁶ *Id.*

⁷ A.M.A., *Guides* at 250 (5th ed. 2001).

the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁸ 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.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹²

The Office medical adviser applied the Office’s standardized procedures to the April 6, 2001 audiogram performed for Dr. Thiltgen. Testing for the left ear revealed decibel losses of 15, 10, 20 and 60 respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss at those cycles of 26.25. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 decibels for the left ear. The 1.25 was multiplied by 1.5 resulting in a 1.875 loss. The 1.875 loss was properly rounded up to a two percent monaural (left ear) loss.¹³ Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 20 and 40 decibels respectively. These decibel losses were totaled at 85 decibels and divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear.¹⁴ The Office medical adviser properly determined that appellant had a two percent monaural loss of hearing in his left ear and a nonratable loss of hearing in his right ear.

On appeal, appellant contends that the amount of the award of compensation should be retroactive to September 16, 1986. The Board notes however that all employment-related conditions, including hearing loss, must reach maximum medical improvement before an award for any scheduled member can be considered. The medical evidence in this case does not support that appellant reached maximum medical improvement until April 6, 2001. The period covered by a schedule award commences on the date that the employee reaches maximum

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *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).

¹³ 5 U.S.C. § 8107.

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- *Medical, Schedule Awards*, Chapter 3.700.4b(2)(b) (September 1994).

improvement from the residuals of the injury. Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.¹⁵

The medical evidence established that appellant has a two percent monaural hearing loss, which the Office has determined was employment related. As he has no more than a 2 percent loss of use of his left ear, he is entitled to 2 percent of the 52 weeks of compensation, which is 1.04 weeks. The Office, therefore, properly determined the number of weeks of compensation for which appellant is entitled under the schedule award.

The October 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 15, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ *Robert T. Leonard*, 34 ECAB 1687 (1983); *Marie J. Born*, 27 ECAB 623 (1976).