

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. COLLINS and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Washington, DC

*Docket No. 03-532; Submitted on the Record;
Issued April 8, 2003*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for hearing loss.

On February 28, 2002 appellant, then a 46-year-old deputy U.S. Marshall, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. Appellant became aware of his hearing loss on January 29, 2002.

Accompanying appellant's claim was an audiogram dated January 29, 2002 and a narrative statement. The audiogram revealed hearing loss. Appellant's narrative statement attributed his hearing loss to: required shooting at the firing range training and qualification; frequent air travel; exposure to jet noise when handling prisoners boarding and exiting aircraft; and automobile traffic.

The employing establishment submitted a statement indicating that appellant was exposed to hazardous noise from the following sources: firearms qualifications at least twice a year and training sessions; aircraft engine noise during prisoner airlift operations; high level of noise in cell blocks; and operation of prisoner vans and buses which emit continuous noise. It was noted that hearing protection was provided to appellant to reduce the risk of hearing damage.

By letter dated May 9, 2002, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury.

In response to the Office's request, appellant submitted a narrative statement indicating that he was still exposed to hazardous noise at work. He was required to qualify for firearms on a quarterly basis and was exposed to noise from traffic. Appellant indicated that he was afforded hearing protection. He became aware of his hearing condition approximately two years ago. Appellant noted that his only hobby, which would expose him to loud noises, was hunting.

By letter dated July 22, 2002, the Office referred appellant to Dr. John V. Simpson, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. The Office provided Dr. Simpson with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Simpson performed an otologic evaluation of appellant on September 9, 2002 and audiometric testing was conducted on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 5, 5, 5 and 40 decibels; left ear 5, 0, 5 and 20 decibels. Dr. Simpson determined that appellant had "high frequency neurosensory loss beginning at 3,000 Hz [hertz] in each ear, worse in the right ear dropping to its worst at 6,000 Hz ... [with] discrimination." He indicated that the sensorineural hearing loss was due to noise exposure encountered in appellant's employment. Dr. Simpson noted that appellant should wear ear protection.

On October 5, 2002 an Office medical adviser reviewed Dr. Simpson's report and the audiometric test of September 9, 2002. The medical adviser concluded that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*), appellant had zero percent monaural impairment on the right and zero percent impairment on the left for a zero percent bilateral hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying the Office's current standards for evaluating hearing loss to the results of the September 9, 2002 audiology test. The medical adviser determined that appellant had a zero percent monaural hearing loss in the left ear and zero percent monaural hearing loss in the right ear and no binaural hearing loss.

By decision dated October 11, 2002, the Office determined that the hearing loss was employment related but not severe enough to be considered ratable for purposes of a schedule award.

The Board finds that the Office properly denied appellant's claim for a schedule award for hearing loss.

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

The Office 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 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

An Office medical adviser applied the Office’s standardized procedures to the September 9, 2002 audiogram performed for Dr. Simpson. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 5, 5, 5 and 40 respectively. These decibels were totaled at 55 and were divided by 4 to obtain an average hearing loss at those cycles of 13.75 decibels. The average of 13.75 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 of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 5, 0, 5 and 20 respectively. These decibels were totaled at 30 and were divided by 4 to obtain the average 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 for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Simpson’s report and the September 9, 2002 audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above.¹⁰

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

⁵ *Id.*

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).

¹⁰ This decision does not affect appellant’s entitlement to medical benefits for the accepted employment injury.

The October 11, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 8, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member