

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. HOUCK and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Missoula, MT

*Docket No. 03-78; Submitted on the Record;
Issued August 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to a schedule award for his work-related hearing loss; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant hearing aids.

On November 11, 2001 appellant, then a former Federal Bureau of Investigation (FBI) agent, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his hearing loss was casually related to his federal employment. Appellant, who was an FBI agent from 1971 until his retirement in 2001, attributed his hearing loss to exposure to firearm noise.

In a May 1, 2002 letter, the employing establishment indicated that appellant had been exposed to noise through firearm training that occurred eight times annually, with each session lasting three hours. In a July 19, 2000 report, Lynn Harris, an audiologist, found appellant to have mild to moderate hearing loss bilaterally at the 3,000 Hertz (Hz), level. Test results were as follows:

Hz	Right	Left
250	10	5
500	5	0
1,000	5	10
2,000	0	5
3,000	25	30
4,000	40	40

6,000	45	50
8,000	30	45

In a June 13, 2002 letter, the Office referred appellant for a second opinion. In a July 9, 2002, Dr. Jeffrey Bartels, tested appellant’s hearing and found:

Hz	Right	Left
500	15	15
1,000	15	15
2,000	15	25
3,000	35	50

Dr. Bartels also opined that appellant’s hearing loss was causally related to his noise exposure and he recommended that appellant have bilateral amplification.

On July 23, 2002 the Office referred appellant’s reports to the district medical adviser. In a July 25, 2002 report, the district medical adviser found that appellant did not have a ratable hearing loss. In an August 5, 2002 decision, the Office accepted that appellant had a work-related hearing loss but that it was nonratable and therefore appellant was not entitled to a schedule award or to hearing aids.

The Board finds that the case is to be remanded for further development.

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 members of the body that are listed in the schedule.¹ 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.² However, as a matter of administrative practice the Board has stated, “for consistent results and to insure equal justice under 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* (5th ed. 2001).⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁴ *George L. Cooper*, 40 ECAB 296, 302 (1988).

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

On July 25, 2002 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Bartels, a Board-certified otolaryngologist, and applied the Office’s standardized procedures to this evaluation. 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 15, 15, 25 and 50 respectively. However, the Office medical adviser incorrectly totaled appellant’s left ear decibel losses at 100 when in fact the total is 105.

Dividing a 105 decibel loss by 4 yields an average hearing loss of 26.25 decibels. This average loss reduced by 25 decibels (25 decibels being discounted as discussed above) equals 1.25 which multiplied by the established factor of 1.5 totals 1.875 percent monaural hearing loss; rounded up produces a 2 percent hearing loss in the left ear.

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, 15, 15 and 35 respectively. These decibel losses were correctly totaled at 80 decibels and were divided by 4 to obtain the average hearing loss of 20 decibels. This average was then reduced by 25 decibels (25 decibels being 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. To compute the binaural hearing loss, the lesser loss in the left ear, 0 percent, was multiplied by the established factor of 5, added to the 2 percent loss in the right ear and this sum was divided by the established factor of 6 to calculate a .33 percent binaural hearing loss, which is rounded down to 0.

The Board finds that the Office erred when it relied on the incorrect calculations of the Office medical adviser regarding appellant’s hearing loss in the left ear. As shown above appellant has two percent hearing loss in his left ear. As appellant has a ratable hearing loss this case must be remanded to the Office for a decision consistent with the Board’s findings.

The Board further finds that the case should be remanded on the issue of hearing aids. The Board has held that as the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of

⁵ A.M.A., *Guides*, 224-25 (4th ed. 1993).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁹

In the present case, the Office denied appellant's request for hearing aids based, in part, on the fact that appellant did not have a ratable hearing loss. As the Board now finds a ratable hearing loss the Office must address this issue in light of this new finding.

The decision of the Office of Workers' Compensation Programs dated August 5, 2002 is set aside and remanded to the Office for a decision consistent with this finding.

Dated, Washington, DC
August 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).