

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES K. FRICK and TENNESSEE VALLEY AUTHORITY,
PARADISE FOSSIL PLANT, Drakesboro, KY

*Docket No. 03-1245; Submitted on the Record;
Issued August 27, 2003*

DECISION and ORDER

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

The issue is whether appellant has sustained a compensable hearing loss causally related to factors of his federal employment.

On June 20, 2002 appellant, then a 50-year-old former assistant unit operator, filed an occupational disease claim (Form CA-2), alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He stated that he first became aware that he had a hearing loss and related it to his employment in 1985. The employing establishment stated that appellant was last exposed to the conditions alleged to have caused his hearing loss on November 10, 1997, the date he retired.

Accompanying the claim from the employing establishment were the following: an undated statement controverting appellant's claim; appellant's answers to a checklist of questions regarding hearing loss; employment history information; audiograms from the employing establishment covering the period 1976 to 1996; and medical examination records for 1976 and 1996.

On October 1, 2002 the Office of Workers' Compensation Programs requested that an Office medical adviser review the audiograms of record and advise if there is any indication of loss of hearing during appellant's federal employment. On October 2, 2002 the Office medical adviser responded "Nothing significant." He further stated that, "Initial employment audiogram of May 10, 1976, showed normal hearing bilaterally for all frequencies and last study of July 1, 1992 still revealed normal hearing except for very mild elevation of threshold at 6,000 Hz (Hertz) on left." He stated "This slight change is within normal variability."

On October 7, 2002 the Office again requested that the medical adviser review the audiograms of record and provide an opinion on appellant's hearing loss during his federal employment. The Office noted that the last (audiogram) was actually dated February 27, 1996 rather than July 1, 1992 as the medical adviser previously stated. On October 9, 2002 the

medical adviser stated that, "Further, comparison of study to February 27, 1996 shows worsening of threshold to 35 dB (decibels) at 4,000 to 6,000 Hz on left. But no worsening on right to 6,000 Hz. However, moderate [hearing loss] at 8,000 Hz on right." He went on to say that, "Above changes, though not striking are probably significant for acoustic trauma during tenure with [federal employment]."

On October 23, 2002 the Office referred appellant, along with the case record and a statement of accepted facts to Dr. Linda Mumford, a Board-certified otolaryngologist, for an examination and evaluation of medical records and to audiologist David Mann for audiologic testing.

On November 19, 2002 the Office received Dr. Mumford's November 8, 2002 report of her examination of appellant that day and the November 8, 2002 audiological evaluation performed for the physician and certified by her. In her report, Dr. Mumford discussed appellant's exposure to noise and stated that the audiogram revealed severe bilateral high-frequency sensorineural hearing loss with workplace exposure sufficient in intensity and duration to have caused the loss. Dr. Mumford opined that after 21 years of significant noise exposure appellant's sensorineural hearing loss is "far to early for presbycusis without a family history or other systemic etiology," but is due to the exposure to noise during appellant's federal employment. Dr. Mumford also diagnosed right otitis externa, but did not address its cause.

Dr. Mumford found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz: in the right ear decibel levels of 15, 15, 25 and 35, respectively; and in the left ear, decibel levels of 10, 15, 15 and 35, respectively.

The Office referred the record to an Office medical adviser for an opinion on whether appellant was entitled to a schedule award. In a February 10, 2003 report, the medical adviser concurred with Dr. Mumford's findings. The medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to the findings of Dr. Mumford to determine that appellant had a nonratable hearing loss bilaterally. The medical adviser indicated that the date of maximum medical improvement was November 8, 2002 and did not recommend hearing aids. The Office medical adviser also stated that appellant's right otitis externa was not causally related to appellant's federal employment.

By decision dated March 3, 2003, the Office accepted appellant's claim for a hearing loss due to his employment-related noise exposure. The Office determined, however, that appellant's hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees' Compensation Act. The Office also found that appellant was not entitled to hearing aids or medical benefits.

The Board finds that appellant has not sustained a compensable hearing loss, causally related to factors of his federal employment.

The schedule award provisions of the 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

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 (cps), 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

Dr. Mumford found that appellant sustained bilateral high-frequency sensorineural hearing loss due to years of significant noise exposure during his federal employment. He found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps: in the right ear decibel levels of 15, 15, 25 and 35, respectively; and in the left ear, decibel levels of 10, 15, 15 and 35, respectively.

The Office medical adviser concluded that, based on the November 8, 2002 report and audiogram of Dr. Mumford, the Board-certified otolaryngologist, to whom the Office referred appellant, that appellant sustained an employment-related bilateral sensorineural hearing loss. He properly applied the Office’s standardized procedures to the November 8, 2002, audiogram

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*

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)* (issued August 13, 2002).

performed for Dr. Mumford. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dB levels of 15, 15, 25 and 35, respectively. These dBs were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 dBs. The average of 22.5 dBs was then reduced by 25 dBs (the first 25 dBs 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 cps revealed dB levels of 10, 15, 15 and 35, respectively. These dBs were totaled at 75 and were divided by 4 to obtain the average hearing loss at those cycles of 18.75 dBs. The average of 18.75 was then reduced by 25 dBs (the first 25 dBs 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 left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided in Dr. Mumford's report dated November 8, 2002 and the accompanying November 8, 2002 audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The Board finds that the medical evidence of record, as represented by Dr. Mumford, reveals that, although appellant had sustained an employment-related loss of hearing, it was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.¹⁰

The decision March 3, 2003 of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ *Royce L. Chute*, 36 ECAB 202 (1984).