



January 1990. Audiograms dated June 13, 1974, March 27, 1990 and June 18, 2002 were submitted.

The employing establishment furnished the Office with copies of appellant's job description and noise dosimetry surveys at his job site from 1994 through 1996.

By letter dated November 21 and 27, 2002, the Office referred appellant to Dr. Terry Brandt, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing. The Office provided him with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Brandt evaluated appellant on December 17, 2002 and audiometric testing was performed on Dr. Brandt's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed the following: right ear 20, 20, 30 and 25 decibels; left ear 20, 25, 30 and 25 decibels. In his report dated December 17, 2002, Dr. Brandt related appellant's history of noise exposure and diagnosed mild bilateral sensorineural hearing loss. He opined that appellant's sensorineural hearing loss was not due to noise exposure encountered in his federal employment as there was no noise-exposure pattern of hearing loss in either ear. Dr. Brandt recommended ongoing protection from loud noises and audiometric testing.

On January 9, 2003 an Office medical adviser reviewed appellant's case file and determined that he did not have a ratable hearing loss. The Office medical adviser further stated that, although the noise exposure on the job was deemed sufficient to cause sensorineural hearing loss, he agreed with Dr. Brandt that the pure tone average pattern was not the pattern of hearing loss associated with noise exposure. Therefore, the Office medical adviser opined that the mild hearing loss was not related to the federal job.

In a decision dated January 15, 2003, the Office denied the claim on the basis that the claimed medical condition was not related to the established work-related events.

By letter dated January 22, 2003, appellant requested a review of the written record by an Office hearing representative. By decision dated June 26, 2003, an Office hearing representative reviewed the evidence of record and affirmed the denial of the claim on the basis that appellant did not sustain a ratable hearing loss.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

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<sup>1</sup> 5 U.S.C. § 8101.

compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.

The schedule award provisions of the Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* noted above using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a “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 sounds under everyday conditions. Each amount is then multiplied by 1.5. This would provide the percentage of hearing loss for each ear. To determine the percentage for a binaural hearing loss, the amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at the percentage of binaural hearing loss.<sup>7</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss for schedule award purposes.<sup>8</sup>

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<sup>2</sup> Joe D. Cameron, 41 ECAB 153 (1989); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> Victor J. Woodhams, 41 ECAB 345 (1989).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> *Id.*

<sup>7</sup> A.M.A., *Guides* 246-50 (5<sup>th</sup> ed. 2000).

<sup>8</sup> Dannel C. Goings, 37 ECAB 781 (1986).

### ANALYSIS

In this case, Dr. Brandt, an Office referral specialist, after reviewing a statement of accepted facts, medical records, an audiogram performed for him and conducting a physical examination, noted that the medical evidence indicated that there was no noise-exposure pattern of hearing loss in either ear. Accordingly, he opined that appellant's hearing loss was not the result of his federal employment. Dr. Brandt additionally advised that appellant's December 17, 2002 audiometric examination did not demonstrate a ratable hearing loss. The Office medical adviser agreed with the findings of Dr. Brandt that the mild hearing loss was not related to appellant's federal employment and that the calculated binaural hearing loss resulted in a zero percent impairment. While the Office denied appellant's claim on January 15, 2003 because the medical evidence did not establish that appellant's condition was causally related to his employment, the Office hearing representative instead addressed only the ratability of appellant's hearing loss. Appellant was entitled to a review of the Office's finding regarding causal relationship because a finding of causal relationship would entitle appellant to medical benefits, regardless of the ratability of the loss.

The Board finds that, accordingly, it was premature for the Office hearing representative to evaluate the ratability of appellant's hearing loss.

### CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of whether appellant sustained a hearing loss in the performance of duty. The decision of the hearing representative did not provide a proper evaluation regarding the denial of the claim.<sup>9</sup>

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<sup>9</sup> See *Joe L. Phillips*, 31 ECAB 1316 (1980).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Branch of Hearings and Review for a *de novo* consideration and preparation of a proper decision in accordance with this order.

Issued: December 9, 2003  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member