

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLIFTON DABBS, JR. and TENNESSE VALLEY AUTHORITY,
DIVISION OF NUCLEAR POWER, Chattanooga, TN

*Docket No. 02-2156; Submitted on the Record;
Issued January 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he is entitled to a schedule award for hearing loss.

On October 5, 2001 appellant, then a 55-year-old laborer foreman, filed a claim alleging that he sustained a hearing loss due to exposure to noise at work. The Office of Workers' Compensation Programs accepted that appellant sustained a bilateral sensorineural hearing loss due to employment factors. Appellant applied for a schedule award and, by decision dated July 31, 2002, the Office denied his claim on the grounds that his hearing loss did not entitle him to a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (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

On June 26, 2002 an Office district medical adviser reviewed the otologic and audiologic testing performed on April 29, 2002 by Dr. Sage Copeland, a Board-certified otolaryngologist who served as an Office referral physician, and applied the Office’s standardized procedures to this evaluation.¹⁰ 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 20, 15, 10 and 20 respectively. These decibel losses were totaled at 65 decibels and were divided by 4 to obtain the average hearing loss of 16.25 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear. 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 20, 15, 10 and 30 respectively. These decibel losses were totaled at 75 decibels and were divided by 4 to obtain the average hearing loss of 18.75 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear.

The report of the Office district medical adviser establishes that appellant does not have a ratable hearing loss which would entitle him to a schedule award. The Office properly denied his claim for such entitlement.¹¹

⁴ A.M.A., *Guides* 224-25 (4th ed. 1993); A.M.A., *Guides* at 226-51 (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 granted*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ Dr. Copeland indicated that appellant sustained a bilateral sensorineural hearing loss due to employment factors.

¹¹ The record contains several other audiograms but none of these was certified by a physician as being accurate. If an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

The July 31, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member