

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CORDELL H. SCHILMOELLER and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY & INSPECTION SERVICE, Springdale, AR

*Docket No. 02-2006; Submitted on the Record;  
Issued June 2, 2003*

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DECISION and ORDER

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

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

On December 27, 2000 appellant, then a 67-year-old veterinarian -- district manager, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his hearing loss was caused by exposure to "rifle shots and loud noises caused by the slaughter floor equipment starting in June 1964 ... to 1983." He stated that he first became aware of a hearing loss injury on January 6, 1999. On the reverse of the form appellant's supervisor noted that appellant first notified him of his condition on December 20, 2000.<sup>1</sup> Appellant did not stop work. In support of his claim, appellant submitted employment applications, medical records, employment history and periodic audiograms dated January 6, 1999 and December 20, 2000.

By letter dated February 20, 2001, the Office of Workers' Compensation Programs advised appellant and the employing establishment that the information submitted was not sufficient to establish that appellant sustained a hearing loss as alleged. The Office provided appellant and the employing establishment with a detailed list of evidence needed and questions to be followed. The Office allotted 30 days, in which to submit the requested information.

In a letter dated March 8, 2001, appellant responded to the Office's request and stated that he retired on January 3, 2001 and had not been exposed to noise since September 7, 2000. Appellant stated:

"First noticed tinnitus about four to five years ago -- at least in my best recollection, but hearing loss was not so prevalent at the time. I went to my physician on January 6, 1999.

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<sup>1</sup> Appellant's supervisor verified that appellant was exposed to hazardous noise in his job.

“I worked on the slaughter plant floor 10 hours a day, 6 days a week, where the decibel readings were not recorded at the time. Since I was the sole inspector at this plant, I was on the floor and in the high noise environment continuously -- except for two breaks and one half hour lunch....”

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“My main hobbies, which take up about 99 percent plus, of my hobby time are golf, fishing and gardening. The remaining one percent would be in woodworking, of which I use a scroll saw, which I used once in the past year.”

By letter dated May 24, 2001, the Office referred appellant, the case record and a statement of accepted facts to a Board-certified otolaryngologist for otologic and audiologic evaluation.

In reports dated June 25 and 26, 2001, Dr. Guillermo Tellez stated that on physical examination appellant’s ear canals and drums were normal and diagnosed high frequency sensorineural hearing loss. Normal speech discrimination and tympanometry. Dr. Tellez assessed appellant with tinnitus. The audiogram indicated testing at 500, 1,000, 2,000 and 3,000 cycles per second and revealed in the right ear: losses of 10, 10, 20 and 50 decibels respectively; and in the left ear 15, 20, 15 and 50 decibels respectively.

By letter dated January 31, 2002, the Office advised appellant that his claim for a hearing loss due to his employment-related noise exposure had been accepted and further advised appellant to submit a Form CA-7 if he desired to request a schedule award. Appellant submitted a Form CA-7 on March 26, 2002.

An Office medical adviser reviewed appellant’s June 25, 2001 audiogram and applied the Office standardized procedures to calculate a nonratable monaural hearing loss in both ears. He reported that appellant had a sensorineural-type loss, but which was not ratable for the purpose of determining a schedule award and authorized hearing aids.

By decision dated June 24, 2002, the Office advised appellant that his claim for a hearing loss due to his employment-related noise exposure had been accepted. However, the Office found that appellant was not entitled to a schedule award as the medical evidence of record failed to establish that he sustained a ratable hearing loss.<sup>2</sup>

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

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<sup>2</sup> In a letter dated July 19, 2002, appellant submitted a letter to the Office addressed to the Branch of Hearings and Review requesting “reconsideration and/or review by the Employees’ Compensation Appeals Board.” In response to appellant’s letter, the Office advised him that his letter was received, but it was unclear and no further action would be taken. Appellant was advised to clarify, which avenue of appeal he requested. Appellant did not respond.

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>5</sup>

Under the A.M.A., *Guides*,<sup>6</sup> hearing loss is evaluated by determining decibel loss at the frequency levels 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 since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds in everyday listening conditions.<sup>7</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. 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.<sup>8</sup>

The Office medical adviser applied the Office's standardized procedures to the June 25, 2001 audiogram performed for Dr. Tellez. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 10, 10, 20 and 50 decibels respectively. These losses were totaled at 90 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 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 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 cycles per second revealed losses of 15, 20, 15 and 50 decibels respectively. These losses were totaled at 100 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels, as discussed above, to equal 0, which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the zero by five to equal zero, which was

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>7</sup> *Id.* at 224.

<sup>8</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).

added to zero. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards, applicable to all employees in hearing loss claims under the Act, to the findings stated in Dr. Tellez' June 25, 2001 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram indicating that appellant has a compensable hearing loss. Thus, while appellant has shown that he does have an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards.

Regarding the finding that appellant sustained tinnitus, the A.M.A., *Guides* states:

“Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to 5 percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”<sup>9</sup>

As appellant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus. Therefore, although appellant's claim for hearing loss was accepted and he is entitled to medical benefits related to this loss, his hearing loss is not now ratable under the Act. Consequently, appellant is not entitled to a schedule award.

The decision of the Office of Workers' Compensation Programs dated June 24, 2002 is hereby affirmed.

Dated, Washington, DC  
June 2, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> A.M.A., *Guides* at 246.