

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICK WISE and DEPARTMENT OF AGRICULTURE,
DISTRICT INSPECTION OPERATIONS, Louisville, KY

*Docket No. 03-385; Submitted on the Record;
Issued June 11, 2003*

DECISION and ORDER

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

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

On March 28, 2002 appellant, then a 39-year-old food inspector, filed an occupational disease claim alleging that on February 15, 2002 he became aware of his progressive hearing loss. He stated that he was exposed to loud equipment at several work sites. Appellant stated that he always used hearing protection when it was available. He noted that, in the first five years and the last two years of his employment, he worked in areas where no hearing protection was available.

Appellant's claim was accompanied by employment records and the employing establishment's statement that its supervisors were strongly encouraged to enforce the wearing of hearing protection at all times in areas with noise levels of 85 or higher. His claim was also accompanied by medical evidence. A February 15, 2002 audiogram performed by an audiologist whose signature is illegible, indicated hearing loss in the right ear at 250, 500, 1,000, 2,000, 3,000, 4,000 and 7,000 hertz as 50, 50, 50, 30, 45, 40, 55 and 55 respectively and 40, 45, 50, 25, 45, 45, 75 and 65 in the left ear.

By letter dated July 2, 2002, the Office of Workers' Compensation Programs requested that appellant submit additional evidence regarding the decibel and frequency level of the noise for each job site. The Office requested that the employing establishment respond to appellant's allegations.

The Office received a September 3, 1986 audiogram from Dr. Ned M. Dipasquale, a Board-certified otolaryngologist. Testing at the frequency levels of 500, 1,000, 2,000, 4,000 and 6,000 hertz revealed decibel losses of 0, 5, 0, 10 and 0 respectively in the right ear and 5, 5, 0, 0 and 5 in the left ear.

After reviewing this evidence, the Office referred appellant, along with medical records, a statement of accepted facts and specific questions to Dr. Linda Mumford, a Board-certified otolaryngologist and David A. Mann, an audiologist, for a second opinion medical examination.

Dr. Mumford submitted an August 19, 2002 report indicating that appellant sustained employment-related hearing loss. He submitted an August 19, 2002 audiogram indicating hearing loss in the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz as 20, 20, 10 and 15 respectively and in the left ear as 20, 20, 20 and 25.

On September 13, 2002 an Office medical adviser reviewed appellant's medical records, including the August 19, 2002 audiogram and opined that he had bilateral sensorineural hearing loss with no ratable hearing loss.

By decision dated September 26, 2002, the Office accepted appellant's claim for hearing loss, but found the evidence of record insufficient to establish that he had a ratable hearing loss due to factors of his employment. Accordingly, the Office determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act. The Office also determined that neither a hearing aid nor additional medical benefits was warranted.

The Board finds that appellant has failed to establish that he has a ratable 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.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*.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 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

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

In this case, the Office medical adviser applied the Office's standardized procedures to the August 19, 2002 audiogram performed by Dr. Mann. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 20, 10 and 15 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 0, which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 20, 20 and 25 respectively for a total of 85 decibels, when divided by 4, which results in a hearing loss of 21.25 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 left ear. Accordingly, the Office medical adviser calculated appellant's hearing loss under the Office standardized procedures to be nonratable for both the left and right ears.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Mann's August 19, 2002 report. This resulted in a calculation of zero percent monaural hearing loss in the right and left ears, which is not ratable under these standards and, therefore, is not compensable for schedule award purposes.

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) Docket No. 01-1570 (issued August 13, 2002).

The decision of the Office of Workers' Compensation Programs dated September 26, 2002 is affirmed.

Dated, Washington, DC
June 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member