

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES R. ALDER and DEPARTMENT OF THE AIR FORCE,
AIR NATIONAL GUARD, Salt Lake City, UT

*Docket No. 02-1370; Submitted on the Record;
Issued March 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained more than a 15 percent hearing loss in the left ear, for which he received a schedule award.

On October 3, 1998 appellant, then a 62-year-old retired in-flight refueling instructor and loadmaster, filed an occupational disease claim alleging that his hearing loss resulted from exposure to airplane engine noise for many years prior to 1980.¹ Appellant explained that he resigned his civilian federal employment, effective March 22, 1980, but continued flying as a national guardsman until October 1980.

On January 29, 1999 the Office of Workers' Compensation Programs referred appellant for a second opinion evaluation to determine the extent of his hearing loss.

Based on the report of Dr. Leland Johnson, a Board-certified otolaryngologist, the Office denied appellant's claim on March 26, 1999. He requested an oral hearing, which was held on December 2, 1999. On February 10, 2000 the hearing representative vacated the denial and remanded the case to the Office to ask Dr. Johnson to provide medical rationale for his conclusion that appellant's hearing loss was not causally related to noise exposure at work.

In a March 31, 2000 report, Dr. Johnson concluded, after reviewing audiograms dated March 21, 1961 through February 2, 1980 and comparing the results of testing, that appellant's hearing did worsen during that time period, due to his exposure to noise at work. On May 24, 2000 the Office accepted appellant's claim for binaural hearing loss.

¹ The employing establishment was aware of appellant's hearing loss at that time because he was terminated from his employment in March 1980 after he failed a mandatory hearing test. *See Eli Haggins*, 36 ECAB 245, 248 (1984) (finding that audiograms administered at the request of the employing establishment constituted actual knowledge of a claimant's work-related hearing loss).

Appellant filed a claim for a schedule award on June 14, 2000. On September 14, 2001 the Office issued a schedule award for a 15 percent monaural hearing loss in his left ear. The schedule award ran for 7.8 weeks from February 2 to March 27, 1980.

The Board finds that appellant is entitled to a 41 percent binaural hearing loss.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.⁵

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second.⁶ 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.⁷ The amount of loss remaining for each ear is then multiplied by 1.5. The hearing loss of the better ear is multiplied by five and added to the amount of hearing loss of the worse ear. This total is then divided by six to arrive at the percentage of binaural hearing loss.⁸

In this case, appellant submitted an audiogram dated March 5, 1999 as well as prior work audiograms from 1961 through February 2, 1980. The Office medical adviser reviewed the March 5, 1999 audiogram administered for Dr. Johnson and concluded that appellant had a 41 percent binaural loss. However, the Office did not consider this audiogram in calculating appellant's hearing loss. Rather, the Office medical adviser evaluated only the February 2, 1980 audiogram in finding a 15 percent monaural loss in the left ear.

While appellant resigned his federal employment effective March 22, 1980, his exposure to in-flight aircraft noise continued until October 1980, several months following the February 2, 1980 audiogram. As appellant was exposed to work-related noise following the February 2, 1980 audiogram; it does not reflect the true extent of his work-related hearing loss.⁹ Therefore,

² 5 U.S.C. §§ 8101-8109.

³ 5 U.S.C. § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999), *citing Daniel C. Goings*, 35 ECAB 781, 783 (1986).

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Donald C. Swiger*, 50 ECAB 462, 463 (1999).

⁷ *Johnson*, *supra* note 4.

⁸ *Stacy L. Walker*, 48 ECAB 353, 355 (1997).

⁹ *See Edgar Dillon*, 35 ECAB 336 (1983).

the 1999 audiogram, the only one post-dating appellant's last work-related exposure, should be used to determine his hearing loss.

Testing for the left ear on March 5, 1999 revealed decibel losses of 25, 35, 70 and 80 cycles per second respectively. These losses totaled 210, which was divided by 4 to obtain the average hearing loss at the 500, 1,000, 2,000 and 3,000 cycles of 52.5. The average was then reduced by 25 decibels (as discussed previously) to equal 27.5, which was multiplied by 1.5 to show a 41.25 percent hearing loss for the left ear.

Testing for the right ear revealed decibel losses of 30, 50, 65 and 65 cycles per seconds respectively for a total of 210. This figure was divided by 4 to obtain the average hearing loss at the 500, 1,000, 2,000 and 3,000 cycles of 52.5. The average was then reduced by the 25-decibel fence to equal 27.5, which was multiplied by 1.5 to show a 41.25 percent hearing loss for the right ear. Because appellant had hearing loss in both ears, the loss in the better ear was multiplied by five and added to the loss in the worse ear. The total was then divided by 6 for a 41.25 binaural loss, which is rounded up to 41 percent.¹⁰

Under the Act, the compensation schedule provides a maximum of 200 weeks of compensation for a complete (100 percent) binaural hearing loss. As appellant's audiogram establishes a 41 percent binaural hearing loss, he is entitled to 82 weeks of compensation or 41 percent of 200 weeks.¹¹

The September 14, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for payment of a schedule award consistent with this opinion.

Dated, Washington, DC
March 24, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Donald C. Swiger*, 50 ECAB 462 (1999). *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 1994).

¹¹ *See* 5 U.S.C. § 8107(c)(13)(B); Federal (FECA) Procedure Manual, Part 3 -- *Schedule Awards*, Chapter 3.700, Exhibit One (December 1994); *Richard Larry Enders*, 48 ECAB 184, 187 (1996).