

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDMUNDO L. GARCIA and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 03-176; Submitted on the Record;
Issued March 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has more than a two percent hearing loss in the left ear.

On August 25, 2000 appellant, then a 59-year-old supply technician, filed a claim asserting that the ringing in his ears was a result of his federal employment. He explained that the ringing in his ears had become permanent in 1980 and made it harder for him to concentrate. On September 18, 2000 he filed a claim for a schedule award.

On January 9, 2001 the Office of Workers' Compensation Programs advised appellant that it had accepted his claim for the condition of tinnitus.

Upon receipt of his employment records, the Office referred appellant, together with a statement of accepted facts, to Dr. Alan Dinesman, an otolaryngologist, for evaluation.

On January 22, 2002 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing thresholds of 20, 20, 20 and 35 decibels in the right ear and 20, 20, 25 and 40 decibels in the left. Test results were determined to be valid and representative of appellant's hearing sensitivity. Dr. Dinesman diagnosed sensorineural hearing loss and tinnitus and he indicated that these conditions were due at least in part to noise exposure encountered in federal employment. Completing the Office's hearing evaluation form, Dr. Dinesman indicated that appellant had an average hearing threshold of 23.75 decibels in the right ear and 26.25 decibels in the left, representing no monaural impairment in either ear. He reported no binaural impairment based on the pure tone averages but noted that appellant had a five percent binaural impairment because tinnitus impacted his ability to perform the activities of daily living. Speech discrimination scores were 100 percent for the right ear and 92 percent for the left ear.

On June 3, 2002 an Office medical adviser reviewed Dr. Dinesman's figures.¹ He determined that appellant's average hearing threshold was 23.75 decibels in the right ear and 26.25 decibels in the left ear, representing monaural impairments of 0 and 2 percent respectively. The Office medical adviser reported that appellant had no binaural impairment.

On September 23, 2002 the Office issued a schedule award for a two percent hearing loss in the left ear.

The Board finds that this case is not in posture for decision.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² 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. 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. The remaining amount is multiplied by a factor of 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.³ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

According to the most recent audiometry, obtained on January 22, 2002, appellant's hearing thresholds were 20, 20, 20 and 35 decibels in the right ear and 20, 20, 25 and 40 decibels in the left ear. These total 95 and 105 decibels, respectively, for averages of 23.75 and 26.25. Subtracting the "fence" of 25 decibels leaves 0 and 1.25 decibels.⁵ Multiplying by 1.5 to determine monaural impairment yields percentage losses of 0 in the right ear and 1.875 in the left ear.

To determine binaural hearing loss, the lesser loss, 0, is multiplied by 5 and then added to the greater loss, 1.875. This result, 1.875, is divided by 6 for a binaural hearing loss estimate of 0.3125 percent, which rounds to 0 percent. Appellant's most recent audiometry that he has no binaural hearing loss. He does, however, have a two percent hearing loss in the left ear based on pure tone thresholds, for which the Office issued a schedule award.

¹ The Office medical adviser explained that the audiometry of January 22, 2002 was used because it was the most recent, met all of the Office's standards and was an integral part of the evaluation of the consulting otologist.

² 20 C.F.R. § 10.404 (1999).

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* at 250 (5th ed. 2001).

⁴ *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).

⁵ Because appellant's average hearing threshold in the left ear is over 25 decibels, he is considered to have an impairment in that ear in the ability to hear everyday sounds under everyday conditions, but only to the extent that the average exceeds 25 decibels.

The fifth edition of the A.M.A., *Guides* provides that tinnitus in the presence of monaural or binaural hearing impairment may impair speech discrimination: “Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”⁶ The A.M.A., *Guides* advises as follows:

“Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment.”⁷

Dr. Dinesman estimated a five percent binaural impairment due to tinnitus impacting the ability to perform activities of daily living, but appellant has no ratable hearing loss in the right ear and therefore can receive no award for “binaural” impairment based on tinnitus.⁸ Furthermore, speech discrimination scores were 100 percent for the right ear, indicating no impairment, and 92 percent for the left ear. Dr. Dinesman offered no comment on the severity of these findings and reported no complaints or current symptoms to support that the ringing impacted appellant’s ability to perform an identified activity of daily living. Although appellant has explained to the Office that the ringing in his ears became permanent in 1980 and has made it harder for him to concentrate, it is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus.

Because Dr. Dinesman reported no subjective data and failed to demonstrate how he integrated this data with the objective data on appellant’s speech discrimination scores, the Board cannot determine whether he followed the procedure set forth in the fifth edition of the A.M.A., *Guides*. The Board will set aside the Office’s September 23, 2002 decision and remand the case for further development and a final decision on appellant’s entitlement to compensation for permanent loss of hearing.

⁶ A.M.A., *Guides* at 246 (5th ed. 2001).

⁷ *Id.*

⁸ The most appellant could receive in this case would be a schedule award for a seven percent permanent loss of hearing in the left ear: two percent based on pure tone thresholds and a maximum of five percent based on tinnitus.

The September 23, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
March 27, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member