

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE G. GARCIA and DEPARTMENT OF JUSTICE, IMMIGRATION
& NATURALIZATION SERVICE, BORDER PATROL, Brownsville, TX

*Docket No. 03-1767; Submitted on the Record;
Issued October 6, 2003*

DECISION and ORDER

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

The issue is whether appellant has a ratable hearing loss which would entitle him to a schedule award.

On December 9, 2002 appellant, then a 52-year-old criminal investigator, filed an occupational disease claim alleging that he sustained a hearing loss causally related to hazardous noise exposure at work.

By decision dated May 21, 2003 the Office of Workers' Compensation Programs accepted appellant's claim for a work-related noise-induced hearing loss but found that his hearing loss was not severe enough to be ratable for schedule award purposes.¹ An appeal of this decision was filed with the Board.

The Board finds that appellant does not have a ratable hearing loss which would entitle him to a schedule award.

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added and averaged.³ 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.⁴ The remaining amount is multiplied by a

¹ The Office noted that appellant was entitled to medical benefits for his hearing loss.

² A.M.A., *Guides*, 250 (5th ed. 2001)

³ *Id.*

⁴ *Id.*

factor of 1.5 to arrive at the percentage of monaural hearing loss.⁵ 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.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁷

In this case the Office's district medical adviser reviewed the results of the audiometric testing performed on April 1, 2003 for Dr. Tan D. Nguyen, an otolaryngologist, who served as an Office referral physician, and applied the Office's standardized procedures to this evaluation.⁸ 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 10, 25, 20 and 40, respectively. These decibel losses were totaled at 95 decibels and were divided by 4 to obtain the average hearing loss 23.75 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 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 5, 25, 20 and 25 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 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. Thus, appellant's hearing loss is not ratable for schedule award purposes

Appellant submitted a medical report dated December 3, 2002 from his attending otolaryngologist and a copy of audiometric test results performed on September 9, 2002, which reveals the same decibel losses as in the April 1, 2003 audiometric test results used by the Office in making its schedule award determination. Accordingly, no schedule award can be awarded.

⁵ *Id.*

⁶ *Id.*

⁷ *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).

⁸ Dr. Nguyen indicated that appellant sustained a bilateral sensorineural hearing loss due to employment factors.

The May 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member