

**United States Department of Labor
Employees' Compensation Appeals Board**

GARETH J. DUROCHER, Appellant

and

**DEPARTMENT OF AGRICULTURE, MEAT &
POULTRY INSPECTION SERVICE,
Green Bay, WI, Employer**

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**Docket No. 04-429
Issued: April 2, 2004**

Appearances:
Gareth J. Durocher, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

Appellant filed an appeal on December 8, 2003 of a June 24, 2003 decision of the Office of Workers' Compensation Programs, finding that his accepted bilateral sensorineural hearing loss was not ratable. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has established that he sustained a ratable hearing loss which would entitle him to a schedule award.

FACTUAL HISTORY

By decision dated September 19, 2002, the Office accepted that appellant, then a 63-year-old retired meat inspector, sustained bilateral sensorineural hearing loss due to noise exposure in the performance of duty from 1971 through his voluntary retirement on March 3, 2002. His hearing loss was diagnosed by Dr. Gary T. Miller, a Board-certified otolaryngologist and second opinion physician. He obtained an audiogram on September 11, 2002 showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second: on the left -- 5, 10, 10 and 70 decibels; and on the right -- 0, 10, 5 and 60 decibels. In a September 11, 2002 report, Dr. Miller

diagnosed a bilateral high frequency sensorineural hearing loss consistent with long-term noise exposure at work.¹

On May 5, 2003 an Office medical adviser reviewed Dr. Miller's September 11, 2002 audiogram and report. The Office medical adviser found that, while appellant's "workplace exposure was sufficient in intensity and duration to have caused the current hearing loss," he did not have a ratable impairment of either ear under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., Guides).

By decision dated June 24, 2003, the Office determined that appellant did not have a ratable hearing loss.

LEGAL PRECEDENT

The Office evaluates industrial hearing loss in accordance with the standards contained in the 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 up and averaged.³ Then, the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁴ The remaining amount is multiplied by 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

ANALYSIS

The Office medical adviser applied the Office's standardized procedures to the September 11, 2002 audiogram, performed for Dr. Miller. 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 0, 10, 5 and 60 decibels, totaled at 75 decibels. The Board notes that dividing the total of 75 decibels by

¹ The Office accepted that, from 1971 to August 2002, appellant was exposed to noise over 85 decibels from equipment on the "kill floor," with no hearing protection provided during the first 10 years. A February 20, 2001 industrial hygiene survey showed "kill floor" noise levels from 93.6 to 97.4 decibels. Appellant also submitted employing establishment audiograms dated December 20, 1989 to September 20, 2001. His December 20, 1989 audiogram was noted as indicating a hearing loss, but that "no further follow-up procedures [were] required." Appellant also submitted a December 28, 2001 audiogram on the letterhead of an otolaryngology group. As these audiograms do not appear to have been reviewed or signed by a physician, they cannot constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Donald E. Stockstaad*, 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).

four results in an average hearing loss at those cycles of 18.75 decibels.⁸ Reducing the average of 18.75 decibels by 25 decibels (the first 25 decibels are discounted as discussed above) equals 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 decibel losses of 5, 10, 10 and 70 decibels, totaled at 95 decibels. Dividing the total of 95 decibels by 4 results in an average hearing loss of 23.75 decibels at those cycles. Subtracting the fence of 25 decibels from the average of 23.75 decibels results in a zero percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a zero percent binaural hearing loss.

As Dr. Miller's September 11, 2002 audiogram was the sole report of record from a physician and complied with the Office's procedural requirements, the Office properly used it to rate appellant's hearing loss.⁹ Although his claim for hearing loss was accepted, his hearing loss is not ratable under the Federal Employees' Compensation Act for a schedule award. Consequently, appellant is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant does not have a ratable loss of hearing and, therefore, is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2003 is affirmed.

Issued: April 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁸ The Board notes that the Office medical adviser did not perform the complete calculation as he determined that the total losses in each ear were less than 100 decibels and, therefore, not ratable. Therefore, the Board performed the portion of the calculations in which the total decibel losses are divided by 4 and the "fence" of 25 decibels subtracted from that result.

⁹ *James A. England*, 47 ECAB 1115 (1995).