

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOSEA THOMAS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Alameda, Calif.

*Docket No. 96-2333; Submitted on the Record;
Issued August 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The record forwarded on appeal indicates that appellant originally filed an occupational disease claim for hearing loss on August 10, 1978. At that time appellant was an aircraft examiner/electrician. Appellant alleged that he sustained bilateral hearing loss due to exposure to noise from riveting guns while working in the nose wheelwell of aircraft. He stated that he first became aware that he had a hearing loss problem in August 1966, but noticed it became worse in February 1978 and at that time realized it was caused or aggravated by his employment. Accompanying the claim were a work history, audiology records and a noise exposure summary. The Office of Workers' Compensation Programs referred appellant to Dr. William J. Wolfenden, Jr., a Board-certified otolaryngologist, for audiometric testing and otologic evaluation. In a May 20, 1980 report, Dr. Wolfenden reported the findings of his May 12, 1980 examination of appellant and concluded that he suffered from a very mild bilateral high frequency noise-induced hearing loss, worse on the left side. Dr. Wolfenden's report was accompanied by a May 12, 1980 audiogram performed for him at the French Hospital Medical Center. An Office medical adviser, in a June 3, 1980 report, opined after reviewing Dr. Wolfenden's report, and accompanying audiogram, that appellant suffered from very mild high frequency hearing loss which was nonratable for schedule award purposes. On July 9, 1980 the Office accepted appellant's claim for mild high frequency hearing loss. By letter dated August 7, 1980, the Office issued a tentative decision, notifying appellant that the medical evidence of record failed to demonstrate that he had a compensable loss of hearing at that time, but that his claim would be kept for future consideration in the event he had any further difficulty which may be the basis for compensation payments or medical treatment.

On November 4, 1992 appellant, since December 1981 an Overhaul and Repair general foreman, filed another occupational disease claim for hearing loss stating, "I filed a claim in 1978 but thing[s] seem to be getting wors[e] now." He went on to say, "When my wife is talking

to me I have to look directly at her to hear her.” He further stated, “ I believe my hearing loss is due to the type of work that I performed since I have been working for NADEP. I have been working around aircraft since I was discharged from the Navy. I have worked around impact tools and on the flight line during run-up of jet aircraft. When I first hired on in the overhaul and repair department I had no problems with my hearing.”

By letter dated April 27, 1993, the Office referred appellant to Dr. Wade R. Cartwright, a Board-certified otolaryngologist, for audiologic and otologic evaluation. In a May 18, 1993 report, Dr. Cartwright related appellant’s work history, noted a preemployment audiogram disclosing normal hearing and that in 1978 appellant’s claim was accepted for mild high frequency hearing loss which was not compensable at that time. Dr. Cartwright reported the findings of his examination of appellant and concluded that appellant suffered from a mild high frequency sensorineural hearing loss resulting from his occupational noise exposure during his employment at the employment establishment, and that the hearing loss is below compensable limits. A May 18, 1993 audiogram performed for Dr. Cartwright accompanied his report.

On August 3, 1993 the Office referred a statement of accepted facts, the record, and Dr. Cartwright’s report and accompanying audiogram to a District medical adviser.¹ In an August 12, 1993 report, the medical adviser opined that appellant suffered from bilateral high frequency neurosensory hearing loss consistent in part with hearing loss due to noise exposure. He also found that appellant’s hearing loss was nonratable for schedule award purposes.

By decision dated June 24, 1996, the Office denied appellant’s claim findings that although his hearing loss was due to his employment-related noise exposure, that it was nonratable under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and, therefore, appellant was not entitled to a schedule award under the Federal Employees’ Compensation Act.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The schedule award provision of the 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. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.³ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁴

¹ On August 5, 1993 the record was updated with several hearing conservation sheets and reference audiograms.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* (4th ed. 1993), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then 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.⁵ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural 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.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

The District medical adviser applied the Office’s standard procedures to the May 18, 1993 audiogram performed for Dr. Cartwright, a Board-certified otolaryngologist to whom the Office referred appellant. The District medical adviser concurred with Dr. Cartwright’s assessment that appellant suffered from a noise-induced, high frequency, neurosensory hearing loss bilaterally. Testing for the right ear at the relevant frequencies revealed decibel losses of 5, 15, 10, and 15 respectively. These decibels were totaled at 45 and were divided by 4 to obtain the average hearing loss at those cycles of 11.25 decibels. The average of 11.25 was reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 13.75 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.⁸ Testing for the left ear at the relevant frequencies revealed decibel losses of 15, 15, 15 and 20 respectively. These decibels were totaled at 65 and were divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal minus 8.75 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear.⁹ Accordingly, pursuant to the Office’s standardized procedures, the District medical adviser properly determined that appellant had a nonratable hearing loss in both ears.

⁵ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Danniel C. Goings*, *supra* note 2.

⁸ See A.M.A., *Guides* 224 (4th ed. 1993).

⁹ *Id.*

The decision of the Office of Workers' Compensation Programs dated June 24, 1996 is affirmed.

Dated, Washington, D.C.
August 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member