

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD W. HALL and DEPARTMENT OF THE NAVY,  
NAVY PUBLIC WORKS CENTER, Oakland, Calif.

*Docket No. 96-2537; Submitted on the Record;  
Issued August 21, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant sustained a hearing loss in the performance of duty, as alleged.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a hearing loss in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

The schedule award provision of the Act<sup>3</sup> provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office of Workers' Compensation Programs.<sup>4</sup> For consistent results

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> 5 U.S.C. § 8107 *et seq.*

<sup>4</sup> *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) 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 and the “fence” of 25 decibels is deducted since, 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 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 5, then added to the greater loss and the total is divided by 6, to arrive at the amount of the binaural loss.<sup>6</sup> The Board has concurred in the Office’s use of this standard for evaluating hearing losses for schedule award purposes.<sup>7</sup>

In addition to the standard by which it computes the actual percentage of loss of hearing, the Office has also set forth requirements for the medical evidence to be used in evaluating hearing loss. The requirements are set forth in the Federal (FECA) Procedure Manual and provide, *inter alia*, that the claimant undergo audiological evaluation and otological examination, that the audiological testing precede the otological examination, that the audiological evaluation and otological examination be performed by different individuals as a method of evaluating the reliability of the findings; that the audiologist and otolaryngologist be certified, that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that the audiometric test results include both bone conduction and pure tone air conduction thresholds; speech reception thresholds and monaural discrimination scores and the otolaryngologist’s report must include: date and hour of examination; date and hour of employee’s last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to employment-related noise exposure; and a statement of the reliability of the tests.<sup>8</sup>

In the present case, the record contains audiograms which were performed on appellant on November 2, 1995 February 28 and 29, 1996 March 4, 1996 May 2, 1996 June 4, 1996 and a “reference audiogram” dated September 2, 1994. The Office referred appellant to Dr. Phillip S. McGinn, a Board-certified otolaryngologist, for an audiologic and otologic evaluation. In his June 5, 1996 report, Dr. McGinn considered appellant’s history of injury, performed a physical examination and reviewed the June 4, 1996 audiogram. He noted that a yellow hue behind the right ear’s tympanic membrane implied fluid and that the left tympanic membrane was clear. He opined that pursuant to the A.M.A., *Guides* (4<sup>th</sup> ed. 1994), appellant had a 5.6 percent hearing

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<sup>5</sup> *Arthur E. Anderson, supra* note 4 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

<sup>6</sup> *See also* A.M.A., *Guides*, p. 224 (4th ed. 1993).

<sup>7</sup> *Danniel C. Goings, supra* note 4.

<sup>8</sup> *See Raymond VanNett*, 44 ECAB 480, 482-83 (1993); *George L. Cooper*, 40 ECAB 296, 303 (1988).

loss in his right ear due to serous otitis media which was not industrially related. Dr. McGinn stated that, pursuant to the A.M.A., *Guides*, appellant had a zero percent hearing loss in his left ear. He stated that following successful resolution of the right serous otitis media, appellant needed to be retested and that he was not permanent and stationary at the time.

The Office referred appellant's record to an Office medical consultant for further evaluation. In his report dated July 31, 1996, the Office medical consultant considered appellant's history of injury, reviewed the audiograms of record and Dr. McGinn's June 5, 1996 report, and stated that the audiometric testing showed that appellant had a mixed-type hearing loss in his right ear and impedance testing confirmed the otitis media. The medical consultant noted that appellant's condition was not permanent and stationary. He therefore recommended that appellant be retested in three months after being treated with medical therapy to resolve the fluid in the middle ear in order to determine whether he had any hearing loss caused by exposure to federal noise.

By decision dated August 7, 1996, the Office denied appellant's claim, stating that appellant had not established that he had a work-related hearing loss. The Office stated that the Office medical consultant confirmed Dr. McGinn's findings in his June 5, 1996 report that, pursuant to the A.M.A., *Guides* (4<sup>th</sup> ed. 1994), appellant had no ratable hearing loss in the left ear and a mixed conductive hearing loss secondary to serous otitis media in the right ear. The Office further stated that it acknowledged that appellant's diagnosed condition, *i.e.*, the serous otitis media, impeded the results of the audiologic testing, and when medical information indicating that his condition in the left ear had resolved, the Office would reopen his claim and schedule him for repeat audiologic testing.

Appellant has not met his burden of proof in establishing that he sustained a hearing loss causally related to factors of federal employment. In his June 5, 1996 report, Dr. McGuinn found that pursuant to the A.M.A., *Guides* (4<sup>th</sup> ed. 1994) appellant had serous otitis media in his right ear which was not work related and a zero percent hearing loss in his left ear. In his July 31, 1996 report, the Office medical consultant agreed with Dr. McGuinn's findings, and noted that appellant would need to be retested in three months after receiving therapy to determine if the medical condition in his right ear had resolved and whether appellant had a work-related hearing loss. Appellant did not submit any additional evidence prior to appealing his case to the Board. The record therefore does not contain any evidence that appellant sustained a work-related hearing loss.<sup>9</sup>

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<sup>9</sup> See *Bernard O. Mills*, 35 ECAB 273, 276-77 (1983); *Stanley K. Takahaski*, 35 ECAB 1065, 1067-68 (1984).

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 7, 1996 is hereby affirmed.

Dated, Washington, D.C.  
August 21, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member