

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD W. KRIEGER and DEPARTMENT OF THE AIR FORCE,  
MISSOURI AIR NATIONAL GUARD, Jefferson City, Mo.

*Docket No. 97-11; Submitted on the Record;  
Issued August 27, 1998*

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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.

In a decision dated June 25, 1996, the Office of Workers' Compensation Programs rejected appellant's claim for a schedule award for bilateral hearing loss causally related to his exposure to hazardous noises in the performance of his federal employment. The Office found that while appellant had sustained a bilateral high frequency sensorineural hearing loss as a result of this exposure, the extent of the hearing loss was determined to be not ratable or compensable.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.

The schedule award provisions of the Federal Employee's Compensation Act<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>3</sup> *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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> 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.<sup>4</sup> 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.<sup>5</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>6</sup>

The District medical adviser correctly applied the Office’s standard procedures to the March 15, 1996 audiogram obtained by Dr. Laurence A. Levine, a Board-certified otolaryngologist to whom the Office referred appellant. The District medical adviser also agreed with Dr. Levine’s medical diagnosis which revealed that appellant had a bilateral high frequency sensorineural hearing loss, consistent with hearing loss of noise exposure on the job.<sup>7</sup>

Testing for the right ear at the relevant frequencies revealed decibel losses of 10, 15, 20 and 40 for a total of 85, which was divided by 4 for an average hearing loss of 21.25 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted as discussed above) to arrive at 0 or no ratable loss of hearing in the right ear.<sup>8</sup> The hearing loss in the right ear was not ratable under these standards and, therefore, not compensable.

Testing for the left ear at the same frequencies revealed decibel losses of 5, 10, 10 and 25 decibels respectively for a total of 50. This figure was divided by 4, for an average hearing loss of 12.5 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted) to arrive at 0 or no ratable loss of hearing in the left ear.<sup>9</sup> The hearing loss in the left ear was not ratable under these standards and, therefore, not compensable.

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<sup>4</sup> 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.

<sup>5</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

<sup>6</sup> *Danniel C. Goings*, *supra* note 2.

<sup>7</sup> Appellant retired in 1993. However, the Office has accepted that appellant sustained an employment-related hearing loss in both ears due to noise exposure.

<sup>8</sup> See A.M.A., *Guides* 224 (4th ed. 1993).

<sup>9</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated June 25, 1996 is affirmed.

Dated, Washington, D.C.  
August 27, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member