

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY J. BRYANT and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY & INSPECTION SERVICE, Minneapolis, Minn.

*Docket No. 96-1241; Submitted on the Record;
Issued March 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has greater than a 32 percent monaural hearing loss, causally related to his federal employment, for which he has received a schedule award.

Appellant, a 62-year-old food inspector, retired from federal service on January 2, 1994. On January 3, 1994 he filed a claim for hearing loss, and in support submitted a January 3, 1994 audiogram. The audiogram indicated that appellant demonstrated the following hearing thresholds at 500, 1,000, 2,000 and 3,000 cycles per second: 35, 40, 50 and 60 decibels respectively in the right ear; 15, 20, 15 and 15 decibels respectively in the left ear. There were no previous audiograms available for comparison.

On August 15, 1995 the Office of Workers' Compensation Programs referred appellant for a hearing loss evaluation to Dr. Ralph Runkle, a Board-certified otolaryngologist. Appellant was examined and tested audiometrically on August 31, 1995 with the following hearing thresholds at 500, 1,000, 2,000 and 3,000 Hertz revealed: 90, 85, 80 and 85 decibels respectively in the right ear; 15, 15, 10 and 20 decibels respectively in the left ear. Dr. Runkle diagnosed right sensorineural hearing loss and he opined that since January 3, 1995 appellant had experienced marked degeneration of his hearing in the right ear which was not due to noise. He indicated that appellant had at that time a 90 percent right ear hearing loss and a 0 percent left ear hearing loss and that only the hearing loss present prior to January 1995 was causally related to factors of his employment.

On September 12, 1995 the Office accepted that appellant sustained right sensorineural hearing loss.

On February 4, 1996 an Office medical adviser calculated, using the January 3, 1995 audiogram, that appellant had a 31.9 percent right ear hearing loss and a 0 percent left ear hearing loss. The Office medical adviser explained that, although the August 31, 1995 audiogram showed a greater right ear impairment, hearing loss due to noise exposure ceased

when the noise exposure stopped, and that, since appellant retired January 2, 1995 his noise exposure stopped on January 2, 1995, such that the January 3, 1995 audiogram was the one that would accurately measure the amount of hearing loss that could be related to exposure to noise in his federal employment. The Office medical adviser further noted that Dr. Runkle also stated that only the hearing loss present prior to January 1995 was related to factors of employment.

On February 8, 1996 the Office granted appellant a schedule award for a 32 percent monaural right ear hearing loss.

The Board finds that appellant has no greater than a 32 percent permanent monaural (right ear) hearing loss, causally related to factors of his federal employment.

The compensation schedule of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of a member is to be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of table so that there may be uniform standards applicable to all claimants.³

The Office evaluates hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added together and averaged, and 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. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁴ The binaural hearing loss, if any, is determined by first calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, the added to the greater loss, and the total is divided by six to arrive at the amount of binaural hearing loss.⁵ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for scheduled compensation purposes.⁶

The Office medical adviser applied the Office's standardized procedures to the audiogram obtained on January 3, 1995, the day following the complete cessation of appellant's federally-related noise exposure. Testing for the right ear at frequencies of 500, 1,000, 2,000,

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1987).

³ *Henry L. King*, 25 ECAB 39,44 (1973); *August M. Buffa*, 12 ECAB 324,325 (1961).

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (Fourth Edition 1993).

⁵ See also FECA Program Memorandum No. 272 (issued February 24, 1986).

⁶ See *Danniel C. Goings*, *supra* note 2.

and 3,000 cycles per second revealed losses of 35, 40, 50 and 60 decibels, respectively. These losses were totaled at 185 decibels and divided by 4 to arrive at an average hearing loss of 46.25 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 21.25 decibels, which was multiplied by 1.5 to arrive at a 31.9 percent monaural hearing loss for the right ear, which was rounded up to 32 percent.

The same procedure was employed for the decibel levels obtained for the left ear which resulted in a zero percent monaural loss in the left ear.

Although appellant argues that the August 31, 1995 audiogram demonstrates a greater right ear monaural hearing loss, the Board notes that both Dr. Runkle and the Office medical adviser correctly explained that noise-related hearing loss stops when the exposure to the hazardous noise ceases. As appellant's exposure to federal employment-related hazardous noise stopped January 2, 1995, the most accurate audiogram for determination of his hearing loss at that time, and hence his compensable federal employment-related loss, was the January 3, 1995 test. Any hearing loss which occurred after that time was due to something other than his federal employment, and therefore is not compensable under the Act.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 18, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member