

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE H. GRIFFIN and DEPARTMENT OF THE NAVY,
MARE ISLAND SHIPYARD, Vallejo, Calif.

*Docket No. 96-1677; Submitted on the Record;
Issued March 23, 1998*

DECISION and ORDER

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

The issue is whether appellant established that he sustained a compensable binaural hearing loss causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a compensable binaural hearing loss causally related to factors of his federal employment.

On January 25, 1994 appellant, then a rigger worker/helper, filed a claim for an occupational disease (Form CA-2) assigned number A13-1040606 alleging that he first became aware that his hearing loss was caused or aggravated by his employment on September 26, 1986.¹ Appellant did not stop work.² Appellant's claim was accompanied by a narrative statement, employment records and medical evidence, including audiogram test results.

By letter dated May 4, 1994, the Office referred appellant along with medical records and specific instructions regarding the requirements of a medical report to Dr. Michael F. Saviano, a

¹ Previously, on July 18, 1974, appellant filed a claim assigned number A13-0439578 for hearing loss. The Office of Workers' Compensation Programs accepted appellant's claim for binaural hearing loss. By decision dated February 26, 1976, the Office found the evidence of record insufficient to establish that appellant had sustained a compensable binaural hearing loss. No further action was taken on this claim. On May 21, 1987 appellant filed a Form CA-2 assigned number A13-0664591 for hearing loss. The Office accepted appellant's claim for bilateral neurosensory hearing loss on September 10, 1982. By decision dated October 22, 1982, the Office found the evidence of record insufficient to establish that appellant had sustained a compensable binaural hearing loss. By decision dated December 19, 1983, the Office denied appellant's request for modification based on a merit review of the claim. Appellant appealed the Office's decision to the Board. In a decision dated July 31, 1984, the Board affirmed the Office's December 19, 1983 decision. On June 20, 1994 the Office consolidated claim numbers A13-0439578 and A13-0664591 into a master file under claim number A13-1040606 because they involved similar injuries.

² Appellant retired from the employing establishment on February 3, 1994.

Board-certified otolaryngologist, for a second opinion examination. By letter of the same date, the Office advised Dr. Saviano of the referral.

On May 20, 1994 the Office again mailed its May 4, 1994 letter, to appellant due to a correction of Dr. Saviano's address.

Dr. Saviano submitted a June 6, 1994 medical report. An Office medical adviser reviewed the medical records and submitted a January 15, 1995 medical report.

By decision dated March 1, 1996, the Office accepted appellant's claim for bilateral hearing loss, but found the evidence of record insufficient to establish that appellant sustained a compensable hearing loss causally related to factors of his federal employment.

The schedule award provisions of the Federal Employees' Compensation Act³ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.⁴ However, as a matter of administrative practice and to insure consistent results to all claimants, the Office has adopted and the Board has approved the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁵

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz). The losses at each frequency are added up and averaged and a "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 in everyday conditions.⁶ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural hearing 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.⁷

In a June 6, 1994 medical report, Dr. Saviano indicated histories of appellant's injury, medical conditions and family and social life. Dr. Saviano also indicated his findings on physical examination. Dr. Saviano noted that audiometric testing of the right ear on June 2, 1994, at the frequency levels of 500, 1,000, 2,000, 3,000, 4,000, 6,000 and 8,000 Hz revealed decibel losses of 20, 15, 20, 15, 25, 20 and 40 respectively and that testing of the left ear at the above frequency levels revealed decibel losses of 25, 20, 20, 20, 50, 30 and 35 respectively.

³ See generally 5 U.S.C. §§ 8101-8193.

⁴ *Richard Beggs*, 29 ECAB 398 (1977); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁵ *Jimmy B. Newell*, 39 ECAB 181 (1987).

⁶ A.M.A., *Guides*, (4th ed. 1993).

⁷ *Id.*; see also *Danniel C. Goings*, *supra* note 4.

Based on this otologic evaluation of appellant, Dr. Saviano opined that appellant had bilateral high tone nerve hearing loss at 8000 cycles per second and that appellant had hearing loss on the left side to 50 decibels at 4000 cycles per second. Dr. Saviano stated that it was not reasonable to make a correlation of a cause and effect relationship of an occupationally-related hearing loss with the audiogram test results. Dr. Saviano also opined that appellant had tinnitus. Dr. Saviano concluded that if appellant had sustained work-related hearing loss, then his hearing loss should have been more profound in the high frequencies. Dr. Saviano further concluded that appellant should have no difficulty hearing conversational speech if he desired.

The Office received the Office medical adviser's January 15, 1995 medical report, revealing that Dr. Saviano's audiogram test results demonstrated that appellant had a bilateral high frequency sensorineural hearing loss. The Office medical adviser applied the Office's standardized procedures for evaluating hearing loss to the results of Dr. Saviano's June 2, 1994 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 20, 15, 20 and 15 respectively. These decibel losses were totaled at 70 and divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing of the left ear at the same frequency levels revealed decibel losses of 25, 20, 20 and 20 respectively. These decibel losses were totaled at 85 and divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels to equal 0 which was multiplied by 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, the Office medical adviser determined that appellant had a zero percent binaural hearing loss. The Board finds that the Office medical adviser properly applied the standards to the June 2, 1994 audiogram in determining that appellant had a zero percent binaural hearing loss.

Appellant contends on appeal that he is entitled to a schedule award for binaural hearing loss. As noted above, the method used to determine the percentage of loss is a matter that rests in the sound discretion of the Office and the Board has concurred in the Office's adoption of the A.M.A., *Guides* as the standard for evaluating hearing loss for schedule award purposes. Although the record reveals that appellant was exposed to noise during his federal employment and the medical evidence supports that this exposure caused bilateral hearing loss, the extent of this loss was not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁸

⁸ Royce L. Chute, 36 ECAB 202 (1984).

The March 1, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member