

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNON R. SMITH and DEPARTMENT OF THE AIR FORCE,
AIR NATIONAL GUARD, St. Louis, MO

*Docket No. 98-1248; Submitted on the Record;
Issued February 16, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On August 8, 1997 appellant, then a 51-year-old aircraft mechanic supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He also stated that he first became aware that he had a hearing loss problem in 1993. On the reverse side of the form, the employing establishment stated that appellant was last exposed to the conditions alleged to have caused the disease on August 8, 1997.

Accompanying the claim, the employing establishment submitted various documents, including personnel papers, hearing conservation data and noise level studies.

The Office of Workers' Compensation Programs referred appellant to Dr. Laurence Levine, a Board-certified otolaryngologist, for an examination and evaluation of medical records. In a report dated October 29, 1997, Dr. Levine reported the findings of his October 14, 1997 examination of appellant, and stated that, "[Appellant] does report having significant hearing difficulties." He also stated that the audiometric testing and otologic evaluation were performed in accordance with the Office's standards. Dr. Levine further stated that appellant's hearing was "Essentially normal with a slight high frequency loss in both ears from 2,000 to 6,000 hertz (Hz) with a noise notch at 4,000 Hz, left ear greater than right." Dr. Levine found that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed: in the right ear decibel levels of 0, 15, 5 and 20, respectively; and in the left ear, decibel levels of 0, 10, 10 and 10, respectively.

By letter dated November 18, 1997, the Office requested an addendum report from Dr. Levine which included his rationalized medical opinion regarding the relationship of any hearing loss to appellant's civilian federal employment-related noise exposure.

By letter dated December 2, 1997, Dr. Levine responded that “I seriously doubt that any hearing loss exhibited by [appellant] could be attributed to his exposure while employed at Ford Motor Company or the [employing establishment].” He went on to say, “As I stated in my earlier letter, [appellant] has essentially normal hearing with very minimal diminution in hearing sensitivity in the high frequencies.”

On December 29, 1997 the district medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Levine to determine that appellant had a nonratable hearing loss bilaterally. The district medical adviser indicated that the date of maximum medical improvement was October 14, 1997.

By decision dated January 8, 1998, the Office accepted appellant’s claim for a hearing loss due to his employment-related noise exposure. The Office determined, however, that appellant’s hearing loss was nonratable under the standards of the A.M.A., *Guides* and that, therefore, he was not entitled to a schedule award under the Federal Employees’ Compensation Act. In addition, the Office found that the medical evidence established that appellant would not benefit from hearing aids, so additional medical benefits were also denied.

The Board finds that appellant does not have a ratable hearing loss.

The schedule award provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² However, as a matter of administrative practice the Board has stated “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 tables so that there may be uniform standards applicable to all claimants.”³

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 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.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing 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.⁵

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

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

⁴ A.M.A., *Guides*, 224.

⁵ *Id*; see also *Danniel C. Goings*, *supra* note 2 at 784.

The Office medical adviser applied the Office's standardized procedures to the October 14, 1997 audiogram performed for Dr. Levine. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel levels of 0, 15, 5 and 20 respectively. These decibels were totaled at 40 and were divided by 4 to obtain the average hearing loss at those cycles of 10 decibels. The average of 10 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal a negative number which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel levels of 0, 10, 10 and 10, respectively. These decibels were totaled at 30 and were divided by 4 to obtain the average hearing loss at those cycles of 7.5 decibels. The average of 7.5 was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal a negative number which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided in Dr. Levine's report dated October 29, 1997 and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above.⁶

The January 8, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 16, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Board notes that the right ear totaled at 40 divided by 4 equals 10 instead of the 15 shown. However, this error does not change the finding of a nonratable hearing loss in the right ear.