

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD P. RIO and DEPARTMENT OF THE NAVY,
NAVAL SUBMARINE BASE, Silverdale, WA

*Docket No. 98-1559; Submitted on the Record;
Issued February 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for a hearing loss due to noise exposure in the performance of duty

On August 12, 1997 appellant, then a 52-year-old retired training leader, welder, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on September 20, 1987 he first realized that his hearing loss was caused or aggravated by his federal employment.

On January 8, 1998 the Office of Workers' Compensation Programs referred appellant to Dr. Bernard R. Levinthal, a Board-certified otolaryngologist, for an audiologic and otologic examination.

In a February 3, 1998 report, Dr. Levinthal stated that the audiogram performed on January 29, 1998 by audiologist Julia M. Hayes showed a bilateral high-tone sensorineural hearing loss due to appellant's noise exposure at his federal employment. The audiogram indicated that testing for the right ear at frequency levels of 500, 1, 000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 15, 15 and 25 and testing for the left ear revealed decibel losses of 5, 5, 10 and 30 decibels. Dr. Levinthal noted that the test reliability was good.

On February 10, 1998 the Office medical adviser reviewed Dr. Levinthal's February 3, 1998 medical report and January 29, 1998 audiogram. He calculated, based upon the January 29, 1998 audiogram, that appellant had a zero percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear for a zero percent binaural neurosensory hearing loss.

In a February 13, 1998 decision, the Office accepted appellant's claim for a hearing loss due to employment-related exposure. The Office, however, found that appellant was not entitled to a schedule award because his hearing loss was not severe enough to be considered ratable.

The Board finds that appellant is not entitled to a schedule award because he does not have a ratable hearing loss.

The schedule award provisions of the Federal Employees' Compensation Act¹ and the implementing federal regulations² set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.³ However, neither the Act nor the regulations specify the manner in 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.⁴ 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.⁵

The Office currently evaluates industrial hearing losses in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The decibel losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second are added up for each ear, 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 under everyday conditions. 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 hearing loss is multiplied by five, then added to the greater hearing loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in the Office's use of this standard for evaluating hearing loss claims for schedule award purposes.⁶

In applying the Office's standardized procedures to the January 29, 1998 audiogram performed by an audiologist, testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 15, 15 and 25. These decibel losses were totaled at 60 and divided by 4 to obtain the average hearing loss at those cycles of 15 decibels. The average 15 decibels was then reduced by 25 (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the right ear. Testing for the left ear revealed decibel losses of 5, 5, 10 and 30 decibels. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss at those cycles of 12.4 decibels. The average 15 decibels was then reduced by 25 (the first 25 decibels were discounted as discussed above) to equal 0 decibels for the left ear. Accordingly, pursuant to the Office's standardized procedures, the Office properly determined that appellant had a nonratable hearing loss in both ears.

¹ 5 U.S.C. § 8107 *et seq.*

² 20 C.F.R. § 10.304.

³ See *Donald A. Larson*, 41 ECAB 947 (1990); *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Id.*

⁵ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁶ *James A. England*, 47 ECAB 115 (1995).

The Board finds that the Office applied the proper standards to the findings obtained by audiologist Julia Hayes. This resulted in a calculation of a zero percent monaural and binaural hearing loss under these standards and, therefore, a nonratable hearing loss.

The decision of the Office of Workers' Compensation Programs dated February 13, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 18, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member