

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARCHIE D. VIGIL and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Golden, CO

*Docket No. 98-2140; Submitted on the Record;
Issued February 23, 2000*

DECISION and ORDER

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

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

On April 30, 1997 appellant, a 55-year-old assistant manager, filed a claim for hearing loss. In a narrative received by the Office of Workers' Compensation on May 9, 1997, he stated that, from May 9, 1972 through February 1979, in his capacity as a coal mine inspector, he was exposed to high noise levels for up to 8 hours a day, 24 hours a week, with no ear protection. Appellant also submitted a September 16, 1993 medical evaluation form which noted that appellant's "hearing needs correction to normal requirements."

By decision dated July 16, 1997, the Office accepted that appellant's hearing loss was caused by employment-related noise exposure. However, the Office also found the evidence of record insufficient to establish that appellant sustained a ratable hearing loss for the purposes of entitlement to a schedule award.¹ The Office also declined to authorize hearing aids.

In a September 14, 1997 letter, appellant requested reconsideration of the Office's July 16, 1997 decision. In an October 1, 1997 merit decision, the Office denied modification of its July 16, 1997 decision. On November 13, 1997 appellant again requested reconsideration. In a December 10, 1997 merit decision, the Office denied modification of its July 16, 1997 decision. In a January 13, 1998 letter, appellant again requested reconsideration. In an April 10, 1998 merit decision, the Office denied appellant's request for reconsideration. However, the

¹ See generally 5 U.S.C. § 8107.

Office noted that, based on the opinion of the second opinion physician and appellant's treating physician, it authorized hearing aids.

The Office evaluates hearing losses in accordance with the standard set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) and the Board has concurred in the use of this standard.² In addition to this standard, by which it computes the percentage of hearing loss, the Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office's procedure manual, are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include; date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.³

Further, as detailed in the Federal (FECA) Procedure Manual,⁴ the claims examiner should obtain not only factual evidence from which a statement of accepted facts may be developed, but also "refer the claimant for audiological evaluation and otological evaluation addressing the relationship of any hearing loss to the employment and the degree of any permanent impairment."⁵ The Board notes that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, "[o]ther benefits will still be payable if any causally related hearing loss exists" such as a hearing aid.⁶

² *Leisa D. Vassar*, 40 ECAB 1287 (1989). Under this standard, the decibel losses at the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz) are added, then divided by 4 to arrive at the average. From this average, the "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. To determine the loss for both ears, the loss in each ear is calculated using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss. The total is divided by six to arrive at the binaural loss.

³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.500.8(a) (September 1994).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, Chapter 3.700.4(b) (September 1994).

In this case, the Office referred appellant to Dr. Alan Lipkin, Board-certified in otolaryngology, to determine whether appellant had a work-related hearing loss. In a report dated June 27, 1997, he stated that he had performed a physical examination of appellant and that the results of a June 11, 1997 audiometric examination revealed a “hearing loss (which) would amount to zero percent, with a binaural hearing loss percent of zero percent” based on Office standards. Dr. Lipkin indicated that testing of the right ear at the frequency levels of 500, 1,000, 2,000, 3,000 revealed decibel losses of 15, 10, 30 and 45, respectively and testing of the left ear revealed decibel losses of 15, 15, 30 and 35 respectively.

On July 9, 1997 the Office medical adviser applied the Office’s standardized procedures for evaluating hearing loss to the results of the June 11, 1997 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 15, 10, 30 and 45 respectively. These decibel losses were totaled at 100 and divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 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 15, 15, 30 and 35 respectively. These decibel losses were totaled at 15 and divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 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 hearing loss of the right ear and a zero percent hearing loss of the left ear and thus, concluded that appellant had a zero percent binaural hearing loss.

The Board finds that the Office medical adviser properly applied the standards to the June 11, 1997 audiogram in determining that appellant had a zero percent binaural hearing loss and that the Office properly denied his claim.

In his request for reconsideration, appellant submitted a July 7, 1993 audiogram of the right ear at the frequency levels of 500, 1,000, 2,000, 3,000 which revealed decibel losses of 15, 10, 30 and 45 respectively, and testing of the left ear at the frequency levels of 500, 1,000, 2,000, 3,000 which revealed decibel losses of 15, 15, 30 and 35 respectively. Appellant also submitted a 1989 audiogram which revealed right ear decibel losses of 10, 15, 30 and 30 respectively and left ear decibel losses of 40, 30, 30 and 25 respectively. He also submitted a 1972 audiogram which revealed right ear and left ear decibel losses of 25 for each frequency. However, these reports are of no probative value as there are no indications of equipment standardization, no statement regarding reliability and no indication that the tests were performed by a physician.⁷

Appellant also submitted an audiological examination reviewed by Dr. James A. Harris, Board-certified in otolaryngology, who stated that a November 3, 1997 audiogram of the right ear at frequencies of 500, 1,000, 2,000 and 3,000 revealed decibel losses at 50, 40, 70 and 85 decibels respectively and the left ear which revealed decibel losses of 55, 40, 60, and 65 decibels

⁷ The Board notes that the district medical Director determined that appellant’s September 3, 1997 audiogram did not satisfy protocol requirements but did not refer to the other examinations submitted with appellant’s request for reconsideration.

respectively. However, he failed to follow the appropriate protocol for determining hearing loss. For example, Dr. Harris failed to indicate whether the audiological equipment met the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association.⁸ Further, he failed to include the hour of appellant's examination⁹ or the date and hour of appellant's last exposure to loud noise.¹⁰

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss caused by factors of federal employment and affirms the Office's decisions.

The decisions of the Office of Workers' Compensation Programs dated April 10, 1998, December 10, October 1 and July 17, 1997 are affirmed.

Dated, Washington, D.C.
February 23, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ *Raymond VanNett*, 44 ECAB 480 (1993).

⁹ Dr. Harris noted only that the examination occurred on November 3, 1997.

¹⁰ *Raymond VanNett*, *supra* note 8.