

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD G. LIERLY and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT ADMINISTRATION, Washington, DC

*Docket No. 97-2136; Submitted on the Record;  
Issued March 24, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

On April 15, 1996 appellant, then a 52-year-old retired special agent, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that his hearing loss was caused by exposure to hazardous noise levels in the course of his federal employment. He stated that he believed that his hearing loss injury began with the employing establishment's agent training and continued through his 32 years of federal civilian service. On the reverse of the form, the employing establishment indicated that appellant stopped work on March 3, 1995, the day he retired from federal service.

By letter dated August 29, 1996, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts to Dr. Wallace Taylor, a Board-certified otolaryngologist, for otologic examination and audiological evaluation.

Dr. Taylor performed an otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf on October 2, 1996. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear -- 10, 10, 10 and 35 decibels; left ear -- 15, 15, 15 and 35 decibels.

In his report, Dr. Taylor noted that appellant has evidence of a bilateral symmetrical high frequency sensorineural hearing loss. He opined that appellant's high frequency hearing loss was related to his history of noise exposure.

In a report dated May 14, 1997, an Office medical adviser reviewed the medical record, including the October 2, 1996 audiogram submitted by Dr. Taylor. Applying the Office's standardized guidelines to the October 2, 1996 findings, the Office medical adviser determined that appellant did not have a ratable hearing loss.

On November 12, 1996 the Office accepted appellant's claim for a binaural hearing loss. On November 20, 1996 appellant filed a claim for a schedule award.

By letter decision dated May 16, 1997, the Office determined that, under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* appellant did not have a ratable hearing loss.

The Board finds that appellant has not sustained a ratable hearing loss causally related to factors of his federal employment.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.<sup>1</sup> 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.<sup>2</sup> 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 a uniform standard applicable to all claimants.<sup>3</sup> The A.M.A., *Guides* has been adopted by the Office,<sup>4</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

Under the A.M.A., *Guides*,<sup>6</sup> hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. 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 sounds in everyday listening conditions.<sup>7</sup> 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, the added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>8</sup>

The medical evidence of record does not support appellant's claim that he sustained a ratable hearing loss.

The Office medical adviser applied the Office's standardized procedures to the October 2, 1996 audiogram obtained by Dr. Taylor. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 10, 10, 10 and 35 decibels respectively. These losses were totaled at 65 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> See *Arthur E. Anderson*, 43 ECAB 691 (1992).

<sup>3</sup> See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>4</sup> FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

<sup>5</sup> *Daniel C. Goings*, 37 ECAB 781 (1986).

<sup>6</sup> A.M.A., *Guides* (4th ed. 1993).

<sup>7</sup> *Id.* at 224.

<sup>8</sup> *Id.*; see also *Daniel C. Goings*, *supra* note 5.

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 for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed losses of 15, 15, 15 and 35 decibels respectively. These losses were totaled at 80 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 20 decibel. The average of 20 decibels was then reduced by 25 decibel, as discussed above, to equal 0 which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the zero by five to equal zero which was added to zero. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards, which were applied to all employees in hearing loss claims under the Act,<sup>9</sup> to the findings stated in Dr. Taylor's October 2, 1996 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss as set forth above. The record contains no other properly certified audiogram<sup>10</sup> indicating that appellant has a compensable hearing loss. Thus, while appellant clearly has an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards.

The May 16, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
March 24, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> See 5 U.S.C. § 8107(13).

<sup>10</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).