

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICO VILLALOBOS and DEPARTMENT OF TREASURY,
U.S. CUSTOMS SERVICE, San Antonio, TX

*Docket No. 00-1417; Submitted on the Record;
Issued April 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than an eight percent loss of hearing in the left ear, for which he received a schedule award.

On April 21, 1998 appellant, then a 54-year-old supervisory criminal investigator, filed a notice of occupational disease and claim for compensation, alleging that he sustained bilateral hearing loss caused by hazardous noise associated with discharge of firearms in the performance of duty. Appellant stated that he first became aware that his hearing was deteriorating during a fitness-for-duty examination conducted on September 29, 1993. On the reverse side of the CA-2 notice, the employing establishment indicated that appellant had not stopped work. His date of last exposure was listed as February 17, 1998.

In a May 13, 1998 letter, the Office explained to appellant the factual and medical evidence required to establish his claim.

On June 10, 1998 the employing establishment submitted a statement indicating that appellant was exposed to hazardous noise during various training sessions with firearms and at firing ranges, both indoor and outdoor, as a result of quarterly issued firearms and qualifications and practice sessions.

The Office prepared a statement of accepted facts, indicating that appellant was exposed to .38 caliber handguns and 12 gauge shotguns on a schedule of at least once every 3 months from 2 to 6 hours.

On July 9, 1998 the Office referred appellant to Dr. Eduardo Madiedo, Jr., a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation and review of medical records. In conjunction with that evaluation, an audiogram was performed on July 23, 1998. This showed decibel losses of hearing on the right ear of 0, 10, 40 and 35 at the respective frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz). In the left ear, the decibel

losses were recorded as 10, 25, 40 and 45 at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hz.

In a report dated July 29, 1998, Dr. Madiedo noted appellant's history of noise exposure as "practicing with .38 caliber handguns and 12 gauge shotguns every 3 months from 2 to 6 hours." He recorded physical findings and recommended that appellant be evaluated for a hearing aid. Dr. Madiedo opined that appellant had 0 percent hearing loss in the right ear and 5.6 percent hearing loss in the left ear. He further concluded that appellant's hearing loss was "possibly" related to the factors of employment described in the statement of accepted facts.

In a September 21, 1998 report, Dr. Ronald H. Blum, a district medical adviser, reviewed the medical evidence of record, including the July 23, 1998 audiogram and calculated appellant's percentage of hearing loss as 7.5 percent monaural hearing loss for the left ear. He noted that noise exposure on the job was deemed sufficient to implicate it as a contributing factor to appellant's hearing loss.

On October 1, 1998 appellant filed a (Form CA-7) claim for a schedule award.

In a November 5, 1998 decision, the Office issued a schedule award for an eight percent loss of hearing in the left ear. The period of the award was from July 23 to August 21, 1998.

On November 13, 1998 appellant requested an oral hearing, which was held on September 23, 1999.

At the hearing, appellant submitted a January 26, 1996 audiogram, which showed decibel losses of hearing of 10, 20, 40 and 50 on the left and 0, 10, 30 and 35 on the right at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hz.¹

By letter dated March 12, 1999, the Office authorized purchase of hearing aids for appellant.

In a decision dated December 6, 1999, an Office hearing representative affirmed the Office's November 5, 1998 schedule award decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant does not have greater than eight percent hearing loss of the left ear, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act² set forth the number of weeks of compensation to be paid for permanent loss of the use of the members listed in the schedule.³ The Act, however, does not specify the manner in which the percentage

¹ In a March 1, 1996 report, Dr. Jose F. Lopez indicated that appellant had a high frequency hearing loss demonstrated by the audiogram and that appellant should be further evaluated by an audiologist.

² 5 U.S.C §§ 8101-8193.

³ 5 U.S.C. § 8107.

loss of a member shall be determined. The method used in making such determinations 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 of the American Medical Association (A.M.A.), *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 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. 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.⁶ The Board has concurred in the Office’s use of this new standard for evaluating hearing losses for schedule award purposes.⁷

In the instant case, the Office medical adviser applied the Office’s standardized procedures to the July 23, 1998 audiogram. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second were added up and averaged and the “fence” of 25 decibels was deducted. The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. For hearing levels recorded in the right ear of 0, 10, 40 and 35 decibels, the above formula yields a nonratable hearing loss. For hearing levels recorded at 10, 25, 40 and 45 decibels in the left ear, the above formula yields a 7.5 hearing loss. The 7.5 percentage of hearing loss for the left ear was rounded up by the Office claims examiner to reflect 8 percent total loss of hearing in the left ear.⁸

⁴ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

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

⁶ See A.M.A., *Guides* 224 (4th ed. 1993); FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Danniel C. Goings*, *supra* note 4.

⁸ The March 1, 1996 audiogram was reviewed and does not show any greater than 7.5 percent loss of hearing in appellant’s left ear and no loss of impairment for the right ear.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 6, 1999 is hereby affirmed.

Dated, Washington, DC
April 25, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member