

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN PIEVE and DEPARTMENT OF JUSTICE,
U.S. MARSHALL SERVICE, Phoenix, AZ

*Docket No. 00-667; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

On January 29, 1999 appellant, then a 58-year-old special deputy marshall, filed a notice of occupational disease and claim for compensation alleging that he sustained bilateral hearing loss as a result of exposure to hazardous noise in the performance of duty.¹ He indicated that he first became aware of his hearing condition on July 20, 1995 pursuant to a fitness-for-duty examination. The employing establishment indicated that appellant had not stopped work, but that he was no longer working in the "airlift" where his noise exposure occurred.

At the request of the Office of Workers' Compensation Programs, the employing establishment submitted personnel records and an audiological test dated May 26, 1995.

On April 21, 1999 the Office determined that appellant's job as an independent contract guard met the criteria for an "employee" of the employing establishment; therefore, appellant was eligible for compensation for hearing loss sustained in the performance of his federal duties.²

By letter dated April 23, 1999, the Office referred appellant along with a statement of accepted facts to Dr. C. Phillip Daspit, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation and review of medical records. In his report of May 12,

¹ Appellant's job was described as requiring him to "transfer prisoners from jail to airlift at the airport where jet airplane noise was quite high."

² In a statement of accepted facts dated April 22, 1999, the Office determined that appellant was exposed to noise in excess of 85 decibels on a regular basis during the entire period of his employment with the employing establishment. The date of appellant's last exposure was June 12, 1998; after that date, appellant became a court security officer for the U.S. Courthouse in Phoenix, Arizona.

1999, Dr. Daspit reviewed appellant's work history and noted examination findings. He stated that the May 10, 1999 audiogram showed a mild, high frequency sensorineural hearing loss, greater on the left side, with a drop in the frequencies of 4000 hertz (Hz) in both ears, right ear at 30 decibels and left ear at 35 decibels. At 6000 Hz, the thresholds were listed as right ear at 40 decibels and 50 decibels in the left ear. At 8,000 Hz, the thresholds were listed as 25 decibels in the right ear and 55 decibels in the left ear. Dr. Daspit diagnosed mild, high frequency hearing loss of the left ear but calculated no percentage of hearing loss. He concluded that appellant's condition was due to noise exposure in his federal employment.

In an August 14, 1999 report, Dr. David N. Schindler, an Office medical adviser and a Board-certified otolaryngologist, calculated appellant's percentage of hearing loss as zero percent monaural loss in the left ear and zero percent monaural loss in the right ear and zero percent binaural neurosensory hearing loss.

In a decision dated September 23, 1999, the Office accepted that appellant sustained bilateral hearing loss due to many years of exposure to hazardous noise in his federal employment. The Office, however, found that medical evidence of record established that appellant had no ratable hearing loss and therefore denied appellant's claim.

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

The schedule award provisions of the Federal Employees' Compensation Act 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 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 the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) 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

³ 5 U.S.C. § 8107.

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

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

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

Board has concurred in the Office's use of this new standard for evaluating hearing losses for schedule award purposes.⁷

In this case, the Office medical adviser applied the Office's standardized procedures to the May 10, 1999 audiogram. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hz 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 left ear of 5, 10, 5 and 20 decibels and in the right ear of 5, 15, 20 and 5 decibels, the above formula yields a nonratable hearing loss. Thus, while the Office has accepted that appellant's employment-related noise exposure caused a bilateral hearing loss, the loss is not sufficient, under the standards set forth in the A.M.A., *Guides*, to entitle appellant to a schedule award.⁸

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 23, 1999 is hereby affirmed.

Dated, Washington, DC
January 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁷ *James A. England*, 47 ECAB 115 (1995); *Daniel C. Goings*, *supra* note 4.

⁸ The Board has also reviewed the May 26, 1995 audiological test under the proper standards but it failed to demonstrate a ratable hearing loss.