

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD W. CHASTAIN and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Baker City, OR

*Docket No. 00-1427; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On August 4, 1998 appellant, then a 47-year-old engineering equipment operator, filed an occupational disease claim for loss of hearing related to his federal employment. In support of his claim, he submitted medical records including audiogram results dated May 31, 1994, January 23, 1995, December 9, 1996 and July 7, 1998. The employing establishment submitted employment records pertaining to appellant, including a detailed description of his job duties.

On October 13, 1998 the Office of Workers' Compensation Programs requested that an Office medical adviser review a statement of accepted facts, the medical record and a set of questions regarding appellant's hearing. In a report dated October 22, 1998, Donald M. Harvey, Ph.D., an audiological consultant, opined that appellant's hearing loss, on a "more-probable-than-not basis," was employment related.

On January 13, 1999 the Office referred appellant to Dr. Joseph Petrussek, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Petrussek submitted a report dated February 9, 1999 in which he opined that appellant suffered from bilateral sensorineural hearing loss due partially to his federal employment, but that he had a zero percent binaural loss based on the formula provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. An audiogram submitted with Dr. Petrussek's report indicated testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed losses of 10, 0, 35 and 10 decibels (dBs) in the right ear and losses of 5, 0, 30 and 55 dBs in the left ear. In a supplemental report dated February 11, 1999, Michael Sturmak, a certified audiologist, concluded that appellant had a mild high frequency sensorineural hearing loss in the right ear and a mild to moderate sensorineural loss in the left ear, but a zero percent bilateral hearing loss. In a report dated March 15, 1999, Dr. Harvey also determined that appellant had a zero percent binaural hearing loss.

On May 14, 1999 the Office accepted that appellant sustained binaural hearing loss. By decision dated January 21, 2000, the Office determined that appellant's hearing loss was not severe enough to be considered ratable.

The Board finds that appellant is not entitled to a schedule award for his hearing loss.

Under section 8107 of the Federal Employees' Compensation Act and section 10.404 of the implementing regulations, schedule awards are payable for permanent impairment of specified bodily members, functions or organs.¹

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* using the hearing levels recorded at frequencies 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 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday sounds under everyday conditions. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.² The Board has concurred in the Office's adoption of this standard for evaluation of hearing loss for schedule award purposes.³ In addition, Office procedures require that all claims for hearing loss due to its acoustic trauma requires an opinion from a Board-certified specialist in otolaryngology,⁴ and that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association (ASHA), or state licensure as an audiologist.⁵

In the present case, Dr. Petrusek and Dr. Sturmak submitted reports that conform to the applicable criteria of the A.M.A., *Guides*. The audiograms performed under their auspices demonstrated decibel losses of the right ear of 10, 0, 35 and 10 dBs respectively and of 5, 0, 30 and 55 dBs in the left ear. This would equal a 13.75 percent loss of hearing in the right ear and a 22.5 percent hearing loss in the left ear that would compute to a 0 percent binaural hearing loss.

After the fence of 25 decibels is deducted, no ratable hearing loss resulted in either the right or left ear. The record, therefore, indicates that, although appellant has an employment-related hearing loss, it is not considered ratable under the appropriate standards used to determine ratability for schedule awards under the Act. The Office properly determined that appellant was not entitled to a schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated January 21, 2000 is hereby affirmed.

¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.404 (1999).

² A.M.A., *Guides* at 166 (4th ed. 1993).

³ See *James A. England*, 47 ECAB 115 (1995).

⁴ *Raymond VanNett*, 44 ECAB 480 (1993).

⁵ *Id.*

Dated, Washington, DC
March 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member