

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERSCHELL L. HAYNES and TENNESSEE VALLEY AUTHORITY,
SHAWNEE FOSSIL PLANT, West Paducah, KY

*Docket No. 01-2047; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained greater than a 15 percent left ear monaural hearing loss, for which he received a schedule award; and (2) whether he sustained any ratable hearing loss in the right ear.

On February 9, 2001 appellant, then a 62-year-old retired shift supervisor, filed an occupational disease claim, alleging that he sustained a hearing loss causally related to factors of his federal employment. He noted that he first realized that his hearing loss was caused or aggravated by his federal employment in 1990 through 1993. Appellant retired on November 1, 1993. In an accompanying statement, appellant listed his history of employment, indicating that he began his employment with the employing establishment in 1967 and he was exposed to an area where all the auxiliary equipment was located. He noted that “[t]he equipment consisted of high speed boiler feed water pumps, coal pulverizers, fans and various machinery that produced loud rumbling and high pitched sounds.”

In a letter dated March 5, 2001, the Office of Workers' Compensation Programs advised appellant and the employing establishment of the provisions of the Federal Employees' Compensation Act.¹ The Office further advised appellant to submit any annual hearing tests or evidence that would support his claim and describe any noise exposure that he experienced since he retired from the employing establishment.

At the request of the Office, the employing establishment submitted personnel records and audiological tests dated June 5, 1968 through March 25, 1993. The Office referred the tests to a district medical adviser who answered “yes” to the question of whether the tests showed a hearing loss. The district medical adviser noted that the initial monitoring audiogram showed mild, high frequency hearing loss on the left and normal hearing on the right with significant

¹ 5 U.S.C. § 8122(a)(1), 8122(a)(2); *see also* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(c) (April 1995).

progression occurring with moderate to severe high tone loss on the left and mild to moderate high tone loss on the right.

The Office referred appellant and a statement of accepted facts to Dr. Jacques Papazian, a Board-certified otolaryngologist, and David J. Lane, an audiologist, for a second opinion examination. A May 29, 2001 audiogram by Mr. Lane, which was reviewed by Dr. Papazian, showed the following decibel losses at the 500, 1,000, 2,000 and 3,000 Hertz (Hz) frequency levels: 20, 25, 20 and 35 for the right ear; and 20, 25, 25 and 70 for the left ear. In accompanying reports dated May 31, 2001, Dr. Papazian diagnosed sensorineural hearing loss in both ears and opined that appellant's condition was causally related to workplace noise exposure. He noted that in 1968 appellant's hearing was within normal limits but that the most recent audiogram revealed a significant hearing loss "typically found from years of noise exposure."

On June 15, 2001 the Office referred appellant's medical records to an Office medical adviser who applied the Office's standards for evaluating hearing loss and found that appellant sustained a 15 percent left ear hearing loss. He also authorized a trial hearing aid for appellant.

In a letter dated June 20, 2001, the Office advised appellant that it had accepted his claim for a noise-induced hearing loss. The Office advised appellant to submit a Form CA-7 in order to request a schedule award. Appellant submitted his Form CA-7 on July 11, 2001.

By decision dated July 17, 2001, the Office granted appellant a schedule award based on a 15 percent monaural hearing loss of the left ear. The award ran for 7.8 weeks from May 29 to July 14, 2001.

The Board finds that appellant sustained no greater than a 15 percent hearing loss in the left ear, for which he received a schedule award and that he sustained no ratable hearing loss in the right ear.

The schedule award provision of the Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office properly considered the medical evidence submitted in support of appellant's claim. However, the Office failed to apply the most recent edition of the A.M.A., *Guides* to this evidence. On appeal the Board has reviewed the medical evidence and applied the appropriate

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides*, 5th ed. (2001).

edition of the A.M.A., *Guides*. As there was no change in the percentage of the impairment rating for schedule award purposes, the Board finds that the Office's error in the application of the A.M.A., *Guides* was harmless.

A medical report was submitted from Dr. Papazian, an otolaryngologist, which conforms to applicable criteria.⁵ The accompanying audiogram demonstrates losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, which were added to reach appellant's total decibel loss in his left ear.⁶ The A.M.A., *Guides* convert the sum of the total decibel losses in Table 11-1 to reach appellant's monaural loss of hearing for schedule award purposes.⁷ For levels recorded in the left ear of 20, 25, 25 and 70, the sum of 140 derives 15 percent monaural loss and levels recorded in the right ear of 20, 25, 20 and 35, the sum of 100 derives 0 percent loss. There is no medical evidence of record which establishes that appellant had more than a 15 percent permanent hearing loss in the left ear or that he had a ratable hearing loss in the right ear. Therefore, the Office properly granted appellant a schedule award for 15 percent monaural hearing loss of his left ear.

The July 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 8, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁵ *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993).

⁶ The A.M.A., *Guides* provide that if the average of the hearing levels at 500, 1,000, 2,000 and 3,000 Hz is 25 decibels or less, then in accordance with the findings of the 1996 American National Standards Institute audiometric standards, no impairment rating is assigned since there is no change in the ability to hear everyday sounds under everyday listening conditions. A.M.A., *Guides*, 250.

⁷ A.M.A., *Guides*, 247, Table 11-1.