

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES H. CLODIUS and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 03-1199; Submitted on the Record;
Issued July 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has a ratable hearing loss, entitling him to a schedule award; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for reconsideration of the merits of his claim.

On June 21, 2002 appellant, then an 81-year-old retired shipfitter/planning estimator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his exposure to loud noise in the shop and ships with no ear protection (until the later years) caused him to develop a work-related hearing loss. The employing establishment noted that appellant retired as of June 18, 1975.

By letter dated September 17, 2002, appellant was referred to Dr. Gerard Randolph, an otolaryngologist. He reviewed prior and current hearing tests. Dr. Randolph noted that appellant's hearing test, on July 23, 1974, demonstrated the following decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second: 25, 20, 35 and 60 decibels for the left ear and 30, 20, 20 and 50 decibels for the right ear. The hearing test conducted on September 30, 2002 revealed hearing losses of 30, 30, 50 and 65 decibels for the left ear and 25, 30, 50 and 70 for the right ear. In his accompanying report, Dr. Randolph indicated that appellant had a neurosensory hearing loss, bilateral. He opined:

“Audiometrics performed in my office [on] September 30, 2002, reveal a ratable hearing loss of 28.125 [percent] in the right ear, 28.125 [percent] in the left ear, with a binaural hearing loss ratable at 28.13 [percent]. However, the last industrial audiogram dated July 23, 1974, revealed a ratable hearing loss of 7.5 [percent] in the right ear, 15 [percent] in the left ear, with a binaural hearing loss ratable at 8.75 [percent]. The increase in his hearing loss since 1974 would be due to the aging process.”

Dr. Randolph indicated that appellant's workplace exposure was of sufficient intensity and duration to have materially impacted appellant's hearing loss, but that the increase in the

hearing loss was due to presbycusis. He concluded that appellant was a candidate for a hearing aid evaluation and fitting.

By letter dated November 6, 2002, the Office accepted appellant's claim for binaural hearing loss.

The Office medical adviser evaluated appellant's loss of hearing. He determined that as of the July 23, 1974 audiogram, appellant had losses in his right ear for the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second of 5, 10, 10 and 30 decibels for the right ear and 5, 5, 15 and 45 decibels for the left ear. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to these figures, he concluded that appellant had a zero percent binaural hearing loss.

By decision dated November 15, 2002, the Office determined that at the time of appellant's last work-related exposure, his hearing loss was not severe enough to be ratable.

By letter dated January 23, 2003, appellant requested reconsideration. By decision dated March 7, 2003, the Office denied reconsideration, as it determined that the evidence was insufficient to warrant review of the prior decision.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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 and then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

In the present case, Dr. Randolph applied this standardized procedure to appellant's July 23, 1974 audiogram with the following results: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second of 30, 20, 20 and 50 decibels were totaled to equal 120 and then divided by 4 for an average decibel loss of 30. When the "fence" of 25 decibels was subtracted from the 30 decibel average loss, the remainder of 5 was multiplied by 1.5 to yield a 7.5 percent monaural loss in the right ear. Using the same procedure to evaluate the same frequency losses in appellant's left ear of 25, 20, 35 and 60 decibels respectively, the losses were totaled and divided by 4 to yield an average loss of 35 decibels. When the 25 decibel loss was subtracted and then multiplied this figure by 1.5, Dr. Randolph found that appellant had sustained a 15 percent monaural hearing loss in his left ear. To determine appellant's binaural hearing loss at that time, Dr. Randolph took the percent of loss in the better ear, multiplied it by five and added the monaural loss in appellant's worse ear and divided this amount by 6, to determine that appellant had an 8.75 binaural loss. He then subtracted 8 (the amount he determined was caused by presbycusis) and determined that appellant had a 5 percent work-related binaural hearing loss. Dr. Randolph concluded that appellant had an 8.75 percent binaural hearing loss, however, Dr. Randolph did not explain why there was a deduction for presbycusis. Dr. Randolph's charts indicate that a figure of 8 should be deducted for presbycusis in each ear. He did not explain how this calculation conforms with the protocols of the A.M.A., *Guides* as adopted by the Office.

The Office medical adviser's opinion is contrary to the evidence in the records. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses he noted were 5, 10, 10 and 30 decibels for appellant's right ear and 5, 5, 15 and 45 decibels for appellant's left ear at the time of the July 23, 1974 audiogram. However, these results are not consistent with and in fact are considerably lower, than the actual figures listed for the July 23, 1974 audiogram. Without a clarification as to how the Office medical adviser determined the decibel hearing losses, his opinion is of diminished probative value.

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ Therefore, the case should be remanded to the Office for further development concerning the extent of appellant's hearing loss. After such development as it deems necessary the Office should issue an appropriate decision. As the

⁷ *Id.*

⁸ *Id.*

⁹ *Donald E. Stockstad*, 53 ECAB ___ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

Board is remanding this case on the issue of amount of work-related hearing loss, the issue of denial of merit review is moot.

The decisions of the Office of Workers' Compensation Programs dated March 7, 2003 and November 15, 2002 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
July 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member