

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD R. BENSON and DEPARTMENT OF JUSTICE,  
U.S. MARSHALS SERVICE, Nashville, TN

*Docket No. 03-1720; Submitted on the Record;  
Issued September 11, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an employment-related hearing loss that entitles him to a schedule award under the Federal Employees' Compensation Act.

On July 1, 2002 appellant, then a 51-year-old U.S. Marshal, filed a claim for an occupational disease for a hearing loss that he attributed to exposure to noise in his employment. Appellant retired effective June 29, 2002 and his supervisor stated that appellant had "been exposed to years of high level noise without ear protection." The employing establishment submitted results of audiograms made during appellant's employment there, which began on May 23, 1976.

On September 11, 2002 the Office of Workers' Compensation Programs referred appellant, his audiograms and a statement of accepted facts to Dr. Frank Little, Jr., a Board-certified otolaryngologist, for an evaluation of his hearing loss and its relationship to his employment.

In a September 20, 2002 report, Dr. Little diagnosed sensorineural hearing loss and stated that appellant's "work environment [was] sufficient to cause loss." Dr. Little's report was accompanied by a September 19, 2002 audiogram that included results of speech audiometry, a tympanogram and a calibration statement for the audiometer.

On December 18, 2002 an Office medical adviser applied the Office's standards for evaluating hearing losses to the results of Dr. Little's audiogram and concluded that appellant had a zero percent binaural hearing loss.

By decision dated January 7, 2003, the Office advised appellant that it had accepted his claim for bilateral hearing loss, entitling him to medical treatment for that condition. The Office found that appellant's hearing loss was not severe enough to be considered ratable under its standards and that he therefore was not entitled to a schedule award under the Act.

By letter dated January 13, 2003, appellant requested reconsideration, stating that he had tinnitus caused by his hearing loss. Appellant submitted a December 4, 2002 report from Dr. Guy Garman, an osteopath, who diagnosed bilateral tinnitus, “more likely than not associated with the high frequency sensorineural hearing loss that he is experiencing at this time” and recommended “masking devices that he can use to try and distract him from the tinnitus in quiet settings...” Dr. Garman’s report was accompanied by an audiogram done on December 4, 2002 that included speech audiometry and a tympanogram.

On June 4, 2003 an Office medical adviser reviewed Dr. Garman’s December 4, 2002 audiogram and stated that it did “not show a ratable h.l. [hearing loss] and even if it did, it would not be a C/R [causally related] increase over that from audiogram of September 19, 2002 per Dr. Little, for NIHL [noise-induced hearing loss] does not increase after removal from hazardous source of noise.”

By decision dated June 9, 2003, the Office refused to modify its January 7, 2003 decision, finding that there was no evidence that he had a ratable hearing loss due to exposure to noise in his workplace.

The Board finds that appellant has not sustained an employment-related hearing loss that entitles him to a schedule award under the Act.

The schedule award provisions of the Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.<sup>1</sup> 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 a determination is a matter which rests in the sound discretion of the Office.<sup>2</sup> 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 a uniform standard applicable to all claimants.<sup>3</sup> The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office,<sup>4</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides* using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The losses at each frequency are added up and averaged and the “fence” of 25 decibels (dBs) is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Richard Beggs*, 28 ECAB 387 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>4</sup> FECA Program Memorandum No. 272 (issued February 24, 1986).

<sup>5</sup> *Danniel C. Goings*, 37 ECAB 781 (1986).

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.

The Office medical adviser applied the Office's standardized procedures to the September 19, 2002 audiogram from Dr. Little. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 20, 20 and 30, respectively. These decibels were totaled at 80 and divided by 4 to obtain the average hearing loss of 20 dBs. The average loss was reduced by the 25 dBs fence to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent monaural loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 20 and 20, respectively. These decibels were totaled at 65 and divided by 4 to obtain the average hearing loss of 16.25 dBs. The average loss was reduced by the 25 dBs fence to equal 0, which was multiplied by the established factor of 1.5 to compute a 0 percent monaural loss for the left ear.

The Office medical adviser correctly applied standards of the A.M.A., *Guides* to Dr. Little's audiogram to conclude that appellant did not have a ratable hearing loss under the Act. The Office medical adviser also applied these standards to Dr. Garman's December 4, 2002 audiogram and concluded that it also did not show a ratable hearing loss.<sup>6</sup>

Regarding appellant's contention that he should be compensated for his tinnitus, the A.M.A., *Guides* states: "Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to 5 [percent] for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."<sup>7</sup>

As appellant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus.<sup>8</sup> Therefore, although appellant's claim for hearing loss was accepted and he is entitled to medical benefits related to this loss, his hearing loss is not now ratable under the Act. Consequently, appellant is not entitled to a schedule award.

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<sup>6</sup> Although the Office medical adviser did not set forth his calculation of the hearing loss shown by Dr. Garman's audiogram, the Board notes that this audiogram reflects, for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps, decibel losses of 5, 15, 15 and 25, respectively, and for the left ear, losses of 10, 20, 20 and 25 dBs, which when added together, total less than 100 for each ear, reflecting a nonratable loss in each ear under the standards contained in the A.M.A., *Guides*.

<sup>7</sup> A.M.A., *Guides* at 246 (5<sup>th</sup> ed. 2001).

<sup>8</sup> *Juan Trevino*, 54 ECAB \_\_\_\_ (Docket No. 02-1602, issued January 17, 2003).

The June 9 and January 7, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
September 11, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member