

employment. He became aware of his hearing loss on August 22, 2006 and continued to be exposed to noise at his federal employment.¹

By letter dated November 1, 2006, the Office advised appellant of the evidence needed to establish his claim. In a letter of the same date, the Office requested that the employing establishment to address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

Appellant submitted a statement dated October 3, 2006 which advised that he experienced significant hearing loss while in the performance of duty. He summarized his employment as primarily a maintenance mechanic from 1978 to the present, working in various locations throughout the Federal Government and subject to noise from engines, turbo charger air intake systems, bulldozers, grinders, tractors, power shovels and self-propelled artillery.

The employing establishment submitted a letter dated May 17, 2000, noting that appellant's position required exposure to noise levels above the 85 decibel limit and he would therefore be included in the Wisconsin Conservation Hearing Program. The employing establishment stated that from April 16, 1978 to June 25, 2006 appellant worked as a general mechanic, heavy mobile equipment repairer and surface maintenance mechanic inspector. Also submitted were employing establishment audiograms dated April 26, 1989 to September 28, 2006, which revealed asymmetrical hearing loss, noise-induced sensorineural hearing loss and tinnitus.

By letter dated January 23, 2007, the Office referred appellant and a statement of accepted facts to Dr. Craig C. Herther, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Herther performed an otologic evaluation of appellant on February 6, 2007 and audiometric testing was obtained on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 5, 10, 20 and 25 decibels; left ear 35, 15, 15 and 50 decibels. Dr. Herther determined that appellant sustained bilateral high frequency sensorineural hearing loss, left greater than right and left mild low frequency sensorineural hearing loss, due to noise exposure encountered in appellant's federal employment. He noted that the loss was in excess of that expected from presbycusis and high frequency/notch configuration suggested noise-induced hearing loss. Dr. Herther recommended that appellant avoid loud noise.

By decision dated March 19, 2007, the Office accepted that appellant sustained sensorineural high frequency hearing loss, bilaterally, with left worse than right due to workplace exposure to noise.

On March 26, 2007 an Office medical adviser reviewed Dr. Herther's report and the audiometric test of February 6, 2007. The medical adviser concluded that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

¹ On October 11, 2006 appellant filed a CA-2, notice of occupational disease for hearing loss. This appears to be the same claim as that filed on October 25, 2006 except that appellant noted in the October 11, 2006 claim that he became aware of his condition on April 26, 1989.

Impairment, (A.M.A., *Guides*), appellant had a .93 percent binaural sensorineural hearing loss. He noted that the date of maximum medical improvement was February 6, 2007.

On March 28, 2007 appellant filed a claim for a schedule award.

In a decision dated April 23, 2007, the Office granted appellant a schedule award for a .93 percent binaural sensorineural hearing loss. The period of the award was from February 6 to 19, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ 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.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS

An Office medical adviser applied the Office's standardized procedures to the February 6, 2007 audiogram performed for Dr. Herther. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 10, 20 and 25, respectively. These decibels were totaled at 60¹¹ and were divided by 4 to obtain an average hearing loss at those cycles of 15.00 decibels. The average of 15.00 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent monaural loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of ear 35, 15, 15 and 50, respectively. These decibels were totaled at 115 and were divided by 4 to obtain the average hearing loss at those cycles of 28.75 decibels. The average of 28.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 3.75, which was multiplied by the established factor of 1.5 to compute a 5.62 percent hearing monaural loss for the left ear. Rounding up, this would result in a six percent monaural hearing loss in the left ear.¹² However, the Office medical adviser proceeded to calculate binaural loss by taking the lesser loss, 0, multiplying it by 5, then adding it to the greater loss of 5.62 with the total is divided by 6 to arrive at the amount of the binaural hearing loss of .93 percent.

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.¹³ Since the binaural hearing loss in this case is 1 percent (.93 percent rounded up to 1 percent), appellant would be entitled to 1 percent of 200 weeks or 2 weeks of compensation. The Office's April 23, 2007 decision awarded appellant two weeks of compensation for a one percent binaural hearing loss. It is well established, however, that, if calculations based on the monaural hearing loss would result in greater compensation, then the monaural hearing loss calculations should be used.¹⁴ The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks.¹⁵ The Office medical adviser found that the hearing loss in the right ear was 0 percent and in the left ear was 5.62 percent. Rounding to the next whole number, the monaural loss in the left ear is six percent.¹⁶ Six percent of 52 weeks is 3.12 weeks of compensation, resulting in a total of 3.12 weeks of compensation. As this is more than the two weeks of compensation for binaural hearing loss, the Office should have issued the schedule

¹¹ The Board notes that the medical adviser calculated the decibel loss as 70; however, this appears to be a mathematical error as the figures total 60. This error does not change the determination that appellant sustained zero percent monaural loss of the right ear.

¹² FECA Program Memorandum No. 49 (issued May 1, 1967). According to this memorandum, half is rounded up to the nearest whole number. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b) (March 2005).

¹³ 5 U.S.C. § 8107 (c)(13)(B).

¹⁴ FECA Program Memorandum No. 181 (issued November 26, 1974). See *Joseph J. Tillo*, 39 ECAB 1345, 1348 (1988); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁵ 5 U.S.C. § 8107(c)(13)(A).

¹⁶ See *supra* note 12.

award for a six percent hearing loss in the left ear. The Board, therefore, finds that appellant is entitled to an additional 1.12 weeks of compensation.

CONCLUSION

The Board finds that appellant is entitled to a schedule award for a six percent monaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 10, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board