

¹ The Board notes that appellant was employed at the Charleston Naval Shipyard, Charleston, SC.

August 3, 1995. Accompanying the claim were his work history, sources of noise exposure and annual audiograms obtained through an employing establishment hearing conservation program.²

On February 1, 2006 appellant filed a claim for a schedule award.

On May 3, 2006 the Office referred appellant, together with a statement of accepted facts to Dr. Robert Marwick, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature, extent and relationship of appellant's hearing loss to his federal employment.

In a May 18, 2006 report, Dr. Marwick reviewed a baseline audiogram from November 24, 1965 which he advised revealed normal hearing at all frequencies bilaterally. He noted that existing audiograms from May 19, 1994 revealed standard threshold shift in both ears and in 1994 exceeded the anticipated presbycusis³ curb for a 55 year old. Dr. Marwick determined that the occupational noise levels were of sufficient intensity to have caused the bilateral decrease in pure-tone sensitivities. He diagnosed moderate to severe bilateral high frequency sensorineural hearing loss which was due to appellant's noise exposure in the course of his federal employment. Dr. Marwick indicated that the pure-tone configuration in 1994 was consistent with long-term noise-induced hearing loss and advised that appellant should have annual hearing evaluations, use binaural amplification, avoid high levels of noise and use hearing protection. He attached a copy of the May 18, 2006 audiogram and a certificate of acoustic impedance/admittance meter calibration.⁴

On May 30, 2006 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Marwick and applied the Office's standardized procedures to this evaluation. The Office medical adviser determined that appellant did not have a ratable hearing loss under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

By decision dated June 1, 2006, the Office accepted appellant's claim for hearing loss due to his employment-related hearing exposure. However, it determined that appellant's hearing loss was not severe enough to be considered ratable and determined that appellant was not entitled to schedule award compensation for hearing loss. The Office further determined that the medical evidence established that appellant would not benefit from hearing aids and denied his claim for further medical benefits.

² The Board has held that a program of annual audiometric examination conducted by an employing establishment in conjunction with an employee testing program is sufficient to constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury. *See James A. Sheppard*, 55 ECAB 515 (2004).

³ Defined as "A progressive, bilaterally, symmetric perceptive hearing loss occurring with age." DORLAND'S ILLUSTRATED Medical Dictionary (30th ed. 2003).

⁴ Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 20, 10, 10 and 40 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 10 and 55 respectively.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ sets 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.⁷

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁸ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁹ 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.¹⁰ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹¹ 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.¹² The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹³

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award for his hearing loss in accordance with the fifth edition of the A.M.A., *Guides*.

On May 30, 2006 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Marwick, a Board-certified otolaryngologist, and properly applied the Office's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 10, 10 and 40

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ A.M.A., *Guides* at 226-51 (5th ed. 2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

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

respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain the average hearing loss of 20 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 10, 10 and 55 respectively. These decibel losses total 90 decibels and when divided by 4 result in an average hearing loss of 22.5 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a negative figure. The Office medical adviser properly concluded that the calculations showed that appellant did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2006 is affirmed.

Issued: January 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