

On August 19, 2005 appellant, then a 55-year-old engineer, filed an occupational disease claim stating that he developed binaural hearing loss in the performance of duty. He stated that he worked inside a chiller plant within the employing establishment and that he noticed that he was becoming unable to hear certain things over a period of time. Appellant first related his hearing loss to his employment on September 29, 2003. He did not stop work. Appellant

provided personnel forms and audiograms establishing that he worked for the employing establishment since 1980 and was exposed to noise from various sources.

On January 6, 2006 the Office referred appellant to Dr. Mohammed Zafar Iqbal, a Board-certified otolaryngologist, for a second opinion examination to determine whether he had a hearing loss causally related to his employment.

Dr. Iqbal examined appellant and prepared a report on January 20, 2006. He noted that appellant had no other factors which may have contributed to his hearing loss. Dr. Iqbal found a ratable binaural sensorineural hearing loss that was causally related to appellant's employment and diagnosed bilateral sensorineural hearing loss and tinnitus. An audiogram performed on Dr. Iqbal's behalf showed the decibel loss at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The audiogram reflected the following decibel losses: 40, 55, 50 and 55 for the right ear and 55, 50, 45 and 45 for the left ear. Dr. Iqbal concluded that appellant had 37.5 percent monaural hearing loss in the right ear and 36 percent monaural hearing loss in the left ear. He calculated that appellant had 36.25 percent total binaural hearing loss. Dr. Iqbal added an additional 5 percent impairment for tinnitus and concluded that appellant had a total ratable binaural hearing impairment of 41.25 percent.

On April 19, 2006 appellant claimed a schedule award.

On December 5, 2006 the Office accepted appellant's claim for binaural sensorineural hearing loss and tinnitus.

In a January 13, 2007 memorandum, an Office medical adviser reviewed Dr. Iqbal's report and impairment rating. He applied Dr. Iqbal's audiometric measurements and calculated that appellant had 37.5 percent monaural hearing loss in the right ear and 35.625 percent monaural hearing loss in the left ear, for a total of 35.9 percent binaural hearing loss. The medical adviser added 5 percent impairment for tinnitus and calculated that appellant had a total ratable impairment of 40.9 percent binaural hearing loss.

By decision dated March 1, 2007, the Office granted appellant a schedule award for 41 percent binaural hearing loss.¹

¹ Appellant requested reconsideration and a review of the written record. The Office received appellant's undated reconsideration request on August 8, 2007 and his undated request for a review of the written record on August 13, 2007. As noted, on August 31, 2007 appellant filed his appeal with the Board. On September 6, 2007 the Office denied his request for a review of the written record. Because the Board had jurisdiction over the appeal as of August 31, 2007, the Office's September 6, 2007 decision is null and void. *See Arlonia B. Taylor*, 44 ECAB 591 (1993).

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 schedule 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*) 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 cps, 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

ANALYSIS

The Office medical adviser applied the Office's standard procedures, detailed above, to the April 25, 2006 audiogram performed on Dr. Iqbal's behalf. Appellant's April 25, 2006 audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 40, 55, 50 and 55 respectively for the right ear. The total decibel loss in the right ear is 200 decibels. When divided by 4, the result is an average hearing loss of 50 decibels. The average loss of 50 decibels is reduced by the "fence" of 25 decibels to equal 25 decibels,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2002).

⁴ *Id.*

⁵ A.M.A., *Guides* at 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).

which when multiplied by the established factor of 1.5, results in a 37.5 percent monaural hearing loss for the right ear.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 55, 50, 45 and 45 decibels respectively, for a total decibel loss of 195 decibels. When divided by 4, the result is an average hearing loss of 48.75 decibels. The average loss of 48.75 decibels is reduced by the “fence” of 25 decibels, to equal 23.75 decibels, which when multiplied by the established factor of 1.5, results in a 35.625 percent monaural hearing loss for the left ear.

The 35.625 percent monaural hearing loss for the left ear, when multiplied by 5 (as it is the lesser loss), yielded a product of 178.125. The 178.125 was then added to the 37.5 percent monaural hearing loss for the right ear to obtain a total of 215.625. The 215.625 was then divided by 6, in order to calculate a binaural hearing loss of 35.9375 percent. The Office medical examiner rounded the 35.9375 percent to 36 percent binaural hearing loss. He then added 5 percent impairment for tinnitus, recommending that the Office grant appellant’s schedule award request for 41 percent permanent binaural hearing loss. The Board notes that Dr. Iqbal, when performing the Office’s recommended calculations, improperly rounded appellant’s monaural hearing loss for the left ear up to 36 percent, which slightly altered his calculation from that of the Office medical adviser.¹¹

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Iqbal’s January 20, 2006 report and accompanying audiogram. The result is 41 percent binaural hearing loss. Accordingly, the evidence of record does not establish that appellant has more than 41 percent binaural hearing loss.¹²

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he had more than 41 percent binaural hearing loss, for which he received a schedule award.

¹¹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (March 2005) (percentages should not be rounded until the final percent for award purposes is obtained).

¹² On appeal to the Board, appellant submitted new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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