

On January 4, 2006 appellant, then a 63-year-old retired sheet metal mechanic leader, filed an occupational disease claim alleging that he sustained a hearing impairment as a result of working around drills, hammering, rivet guns, impact wrenches and the sound of metal against metal in the performance of duty.

On March 28, 2006 the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On April 3, 2006 appellant filed a claim for a schedule award. A February 21, 2006 audiogram from Dr. Thomak F. Kozlek, Board-certified in otolaryngology, was submitted. On April 14, 2006 the district medical adviser found appellant to have a 7.5 percent monaural hearing loss in the right ear, 0 percent hearing loss in the left ear, and 0 percent binaural hearing loss.

In an April 18, 2006 decision, the Office denied appellant's claim finding that his hearing loss was not severe enough to be considered ratable.

On May 3, 2006 appellant requested a review of the written record.

On August 10, 2006 the Branch of Hearings and Review found that appellant demonstrated a ratable hearing loss as evidenced in the medical adviser's report and remanded the case to the district Office to correct the schedule award determination.

On September 12, 2006 the Office awarded appellant a schedule award for eight percent impairment of the right ear. The award covered a period of compensation from February 21 through March 22, 2006.

On October 4, 2006 appellant requested a review of the written record. Also submitted with his request was an April 27, 2006 audiogram.

In a February 8, 2007 decision, the Office affirmed the previous decision finding that the weight of the medical evidence rested with Dr. Kozlek's audiogram as the newly submitted April 27, 2006 audiogram did not indicate when the audiometric equipment was last calibrated to demonstrate that it had been performed within a year as required by Office policy.

On June 8, 2007 appellant requested reconsideration and submitted audiograms dated April 27, 2006 and March 22, 2007 with calibration dates. The April 27, 2006 audiogram reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 30, 15, 25 and 30 respectively and on the right of 30, 25, 30 and 50 respectively. The March 22, 2007 audiogram reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cps and revealed decibel losses on the left of 30, 15, 25 and 30 respectively and on the right of 30, 15, 20 and 45 respectively.

On August 1, 2007 the medical adviser reviewed the audiograms and used the March 22, 2007 audiogram to determine that appellant had a 20.63 percent hearing loss in the right ear, 7.5 percent hearing loss in the left ear and 9.69 percent binaural hearing loss. The medical adviser noted that appellant had a hearing loss at the 500, 1,000, 2,000 and 3,000 cps frequencies on the left of 15, 25, 30 and 50 and on the right of 15, 20, 45 and 75 respectively. The medical adviser's notations of frequency loss did not match the audiogram findings from the actual audiogram report.

In a September 4, 2007 decision, the Office ordered that the February 8, 2007 decision be modified and that appellant be approved for a hearing loss greater than the eight percent

previously awarded. It noted that appellant had already received compensation for 8 percent impairment to his right ear therefore the 20.63 percent impairment on the right should be reduced by 8 percent resulting in 12.63 percent impairment on the right, 7.5 percent impairment on the left, for a total 9 percent binaural impairment.

In an October 3, 2007 decision, the Office awarded appellant a schedule award for nine percent binaural hearing loss. The award covered a period of compensation from March 23 to July 26, 2006.

On November 26, 2007 appellant requested reconsideration. Also submitted was an audiogram dated October 18, 2007 which reflected testing at frequency levels including those of 500, 1,000, 2,000 and 3,000 cps and revealed decibel losses on the left of 25, 15, 25 and 30 respectively and on the right of 25, 15, 25 and 50 respectively.

On December 13, 2007 the medical adviser reviewed the October 18, 2007 audiogram and calculated appellant to have a 3.75 percent hearing impairment on the right and 0 percent impairment on the left. The medical adviser found appellant to have a hearing loss at the 500, 1,000, 2,000 and 3,000 cps frequencies on the left of 25, 15, 25 and 30 and on the right of 25, 15, 25 and 45 respectively.

In a January 8, 2008 merit decision, the Office denied modification of the previous decision finding that the new audiogram did not demonstrate that appellant was entitled to an increase in schedule award but rather that his hearing loss had improved.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>1</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</sup>

Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>4</sup> Then, the fence of 25 decibels is deducted because, as the A.M.A.,

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<sup>1</sup> The Act provides that, for complete, or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

<sup>2</sup> 20 C.F.R. § 10.404 (2006).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>4</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

*Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>5</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>6</sup> 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 the binaural hearing loss.<sup>7</sup>

The Board has recognized that, if a claimant's employment-related hearing loss worsens in the future, the employee may apply for an additional schedule award for any increased impairment.<sup>8</sup> The Board has also recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.<sup>9</sup>

### ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the October 18, 2007 audiogram. In reviewing appellant's October 18, 2007 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear reveal decibel losses of 25, 15, 25 and 45, respectively, for a total of 110 decibels. This figure when divided by four results in an average hearing loss of 27.5 decibels. The average loss of 27.5 is reduced by 25 decibels to 2.5, which is multiplied by 1.5 and represents a 3.75 percent ratable monaural hearing 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 25, 15, 25 and 30 decibels respectively, for a total of 95 decibels. Utilizing the above-noted formula, results in a zero percent monaural hearing loss for the left ear. Accordingly, appellant's most recent audiogram establishes a ratable hearing loss of 3.75 percent for the right ear.

The Office's October 3, 2007 decision found a ratable hearing loss of 20.63 percent for the right ear and 7.5 percent hearing loss for the left ear and awarded appellant a schedule award for 9 percent binaural hearing loss.<sup>10</sup> It based its decision on appellant's March 22, 2007 audiogram. In reviewing the March 22, 2007 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps for the right ear reveal decibel losses of 30, 15, 20, and 45, respectively, for a total of 110 decibels. This figure when divided by four results in an average

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.0808.7(b)(2) (April 1995). "If, on the other hand, the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period."

<sup>9</sup> *Id.*

<sup>10</sup> After reducing the 20.63 percent right ear impairment by the 8 percent previously awarded to appellant.

hearing loss of 27.5 decibels. The average loss of 27.5 is reduced by 25 decibels to 2.5, which is multiplied by 1.5 and represents a 3.75 percent ratable monaural hearing 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 30, 15, 25 and 30 decibels respectively, for a total of 100 decibels. Utilizing the above-noted formula, results in a zero percent monaural hearing loss for the left ear. The Office medical adviser in reviewing the March 22, 2007 audiogram on August 1, 2007 mistakenly recorded the audiogram findings.

Appellant's most recent audiogram establishes that appellant's hearing has improved and that appellant now has a ratable hearing loss of 3.75 percent for the right ear. On October 3, 2007 the Office awarded appellant a schedule award for nine percent binaural hearing impairment. Appellant has not established that he sustained a hearing impairment greater than the previously awarded nine percent binaural hearing loss for which he received compensation.

### **CONCLUSION**

The Board finds that appellant has not established that he has more than a nine percent binaural hearing loss for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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