



decision dated July 21, 2004, the Office found that the medical evidence established that his hearing loss was not severe enough to be ratable. By decision dated January 27, 2005, an Office hearing representative affirmed the July 21, 2004 decision.

On October 7, 2005, Dr. A.E. Anderson, an otolaryngologist and an Office medical adviser, stated that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant was entitled to up to five percent impairment for tinnitus in the presence of measurable hearing loss if the tinnitus impacted his ability to perform activities of daily living. He stated that “measurable hearing loss” was defined as “ratable hearing loss.” Appellant did not have ratable hearing loss based on the medical evidence.<sup>1</sup>

By decision dated October 18, 2005, the Office found that appellant’s accepted binaural hearing loss was not severe enough to be ratable. It also denied his claim for tinnitus. By decision dated October 18, 2006, an Office hearing representative found that the record was unclear as to whether tinnitus was an accepted condition in appellant’s case. He remanded the case for the Office to make a specific finding as to whether tinnitus was an accepted condition.

In an October 29, 2007 report, Dr. John A. Fetchero, Jr., an otolaryngologist, diagnosed binaural progressive high frequency sensorineural hearing loss and binaural tinnitus. Audiometric testing performed for Dr. Fetchero on October 29, 2007 by Thomas Williams, an audiologist, revealed at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps): right ear decibel losses of 15, 15, 20 and 50; left ear decibels of 15, 15, 15 and 65. On December 14, 2007 Dr. Williams noted that appellant’s bilateral tinnitus was a high-pitched persistent ringing sound which was very bothersome.

On November 6, 2007 an Office medical adviser reviewed the results of the audiometric testing performed for Dr. Fetchero and applied the Office’s standardized procedures. He totaled the decibel losses of 15, 15, 20 and 50 in the right ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 100 decibels and divided by 4 to obtain the average hearing loss of 25 decibels. This average was then reduced by 25 decibels to equal 0 decibels and multiplied by the established factor of 1.5 to compute zero percent impairment in the right ear. The Office medical adviser totaled the losses of 15, 15, 15 and 65 in the left ear at 110 decibels and divided by 4 to obtain the average hearing loss of 27.5 decibels. This average was then reduced by 25 decibels to equal 2.5 which was multiplied by the established factor of 1.5 to compute 3.75, rounded to four percent monaural hearing loss in the left ear. The Office medical adviser noted that appellant was entitled to a schedule award for five percent impairment in the presence of a ratable hearing loss if tinnitus affected his ability to perform activities of daily living. He indicated that, if the October 29, 2007 audiogram, which demonstrated four percent left ear impairment, was used by the Office for granting a schedule award, tinnitus should be an accepted

---

<sup>1</sup> See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (October 2005) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

condition because the onset of this condition was associated with the onset of appellant's accepted work-related noise-induced hearing loss in 1999.

On November 19, 2007 the Office expanded appellant's claim to include binaural tinnitus.

On June 10, 2008 appellant filed a claim for a schedule award.

By decision dated September 12, 2008, the Office granted appellant a schedule award for four percent monaural hearing loss in his left ear for 2.08 weeks from October 29 to November 12, 2007.<sup>2</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>3</sup> provides for compensation to employees sustaining permanent impairment loss of use of scheduled members. 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 determination is a matter in which rests within the sound discretion of the Office. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized 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 Office for evaluating schedule losses and the Board has concurred in the adoption of this standard.<sup>4</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A, *Guides*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added and averaged.<sup>6</sup> 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.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</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, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup>

---

<sup>2</sup> The Federal Employees' Compensation Act provides for 52 weeks of compensation for complete loss of hearing in one ear. 5 U.S.C. § 8107(c)(13)(A). Multiplying 52 weeks by four percent equals 2.08 weeks of compensation.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> See 20 C.F.R. § 10.404; *Thomas O. Bouis*, 57 ECAB 602 (2006).

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

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

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

<sup>8</sup> *Id.*

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

## ANALYSIS

On November 6, 2007 an Office medical adviser reviewed the results of the audiometric testing performed for Dr. Fetchero and applied the Office's standardized procedures. He totaled the decibel losses of 15, 15, 20 and 50 in the right ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 100 decibels and divided by 4 to obtain the average hearing loss of 25 decibels. This average was then reduced by 25 decibels to equal 0 decibels and multiplied by the established factor of 1.5 to compute 0 percent impairment in the right ear. Dr. Anderson totaled the losses of 15, 15, 15 and 65 in the left ear at 110 decibels and divided by 4 to obtain the average hearing loss of 27.5 decibels. This average was reduced by 25 decibels to equal 2.5 and was multiplied by the established factor of 1.5 to compute 3.75, rounded to four percent, monaural hearing loss in the left ear.

The Board finds that the Office properly calculated appellant's right and left ear impairment due to hearing loss. However, further development is needed on the issue of whether appellant is entitled to a schedule award for impairment caused by his accepted binaural tinnitus.

The A.M.A., *Guides* notes that tinnitus, in the presence of unilateral (monaural) or binaural hearing impairment, may impair speech discrimination. For this reason, it allows for compensation of up to five percent for tinnitus "in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."<sup>10</sup> The Office accepted binaural tinnitus as related to appellant's industrial noise-induced hearing loss. The audiologist who performed the audiometric testing noted that appellant's bilateral tinnitus was a high-pitched persistent ringing sound which was very bothersome. The Office medical adviser noted that, under the A.M.A., *Guides*, appellant was entitled to a schedule award for five percent impairment in the presence of a ratable hearing loss if tinnitus affected his ability to perform activities of daily living. In its September 12, 2008 decision, the Office did not address the issue of appellant's claim for impairment due to his accepted tinnitus. On remand, the Office should refer appellant to an otolaryngologist for an examination and determination as to whether his tinnitus affects his ability to perform the activities of daily living. If the examining physician so determines, an Office medical adviser should provide a rationalized explanation as to whether appellant is entitled to the maximum five percent impairment for tinnitus or a lesser percentage. After such further development as the Office deems necessary, it should issue an appropriate decision on appellant's claim for a schedule award due to his accepted binaural tinnitus.

## CONCLUSION

The Board finds that appellant has no more than four percent impairment for hearing loss in his left ear and has no ratable hearing loss in his right ear. The Board further finds that further development is needed on the issue of whether appellant is entitled to a schedule award for his accepted binaural tinnitus.

---

<sup>10</sup> A.M.A., *Guides* 246; *Leslie M. Mahin*, 55 ECAB 311 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 12, 2008 is affirmed as to appellant's impairment due to hearing loss in his ears and remanded for further development on the issue of appellant's tinnitus.

Issued: July 7, 2009  
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