



that he worked in a hazardous noise area at the employing establishment. Appellant further stated that he incurred hearing loss over the years.<sup>1</sup> In support of his claim, he submitted employment records, a narrative statement regarding his noise exposure and audiograms performed by the employing establishment.

By letter dated June 4, 2002, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Jesse E. Phillips, a Board-certified otolaryngologist, for a second opinion medical examination to determine the extent of appellant's hearing loss. On July 25, 2002 Dr. Phillips submitted a medical report, finding that appellant had sensorineural hearing loss. He stated, among other things, that appellant's hearing loss was due to his federal employment and that he would benefit from amplification, although his speech discrimination may cause persistent communication problems.

An accompanying July 11, 2002 audiogram performed by Maureen Coughlin, an audiologist, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second. A July 12, 2002 radiology report of Dr. Michael Wilson, a radiologist, also accompanied Dr. Phillips' report. In this report, Dr. Wilson provided the findings of a magnetic resonance imaging scan of appellant's brain and internal auditory canals with and without contrast. He found that the brain and internal auditory canals were within normal limits with no evidence of acute or chronic abnormality. Dr. Wilson also found chronic appearing paranasal sinusitis that was at least moderate in extent.

On September 2, 2002 an Office medical adviser reviewed the July 11, 2002 audiometric test results and stated that, although appellant had received full medical clearance from Dr. Phillips for his asymmetrical hearing loss, the audiometer had not been calibrated since 1998. The Office medical adviser requested that the Office determine whether the audiometer had been calibrated since July 11, 2002. If it had, then the Office medical adviser stated that appellant should return to have the audiogram repeated only, but if it had not, then a new audiogram was necessary.

After a discussion by telephone on September 10, 2002 with a representative of Dr. Phillips' office regarding the most recent date when the audiological equipment had been calibrated, the Office scheduled a new audiogram, which was performed on September 30, 2002 by Ms. Coughlin.<sup>2</sup> Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 20, 70 and 80. Testing of the left ear at the same frequency levels revealed decibel losses of 20, 15, 20 and 40, respectively. In an October 22, 2002 letter, Dr. Phillips stated that calibration was completed on July 24, 2002. Regarding the results of the new audiogram, he stated that no change was noted from the previous audiogram. He further stated that his diagnosis remained sensorineural hearing loss due in part or all, to noise exposure encountered in appellant's federal employment.

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<sup>1</sup> The record reveals that appellant retired from the employing establishment effective June 3, 2002.

<sup>2</sup> A representative from Dr. Phillips' office informed an Office claims examiner that calibration took place on July 24, 2002, but their bills showed that it was completed in 2001 and the sticker was never updated. She suggested that appellant undergo another examination to ensure accuracy. The Office agreed and advised her that only new audiometric testing was necessary.

On October 31, 2002 an Office medical adviser reviewed the September 30, 2002 audiogram. The Office medical adviser found that the results of the audiogram were consistent with noise-induced hearing impairment secondary to occupational noise exposure for the right ear. The Office medical adviser stated that high frequency hearing impairment in the left ear was nonratable. Binaural amplification was authorized for appellant. The Office medical adviser recommended that appellant use hearing protection when exposed to high intensity noise, both occupationally and recreationally. Applying the tables in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) to the findings of the September 30, 2002 audiogram, the Office medical adviser determined that appellant had 5.9 or 6 percent binaural hearing loss. The Office medical adviser also determined that appellant had a two percent impairment of the whole person.

By letter dated November 5, 2002, the Office accepted appellant's claim for bilateral noise-induced hearing loss. On May 20, 2003 he telephoned the Office inquiring about payment for his schedule award. An Office claims examiner responded by advising appellant to file a schedule award claim with the employing establishment. Appellant replied that he filed this claim along with his occupational disease claim. The claims examiner stated that the claim was not on file. The claims examiner also directed appellant to see his treating physician in response to his request for hearing aids.

On May 28, 2003 appellant filed a Form CA-7 for a schedule award. By decision dated June 16, 2003, the Office granted appellant a schedule award for a 6 percent binaural loss of hearing for the period September 30 through December 22, 2002, a total of 12 weeks of compensation.

In a July 2, 2003 letter, appellant requested a review of the written record by an Office hearing representative. He submitted a copy of the July 11, 2002 audiogram in support of his request.

By decision dated December 18, 2003, the hearing representative affirmed the Office's June 16, 2003 decision. The hearing representative found that the Office medical adviser properly applied the appropriate standards to the figures provided by the September 30, 2002 audiogram performed for Dr. Phillips in determining that appellant had a six percent binaural hearing loss.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> set forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>5</sup> However, neither the Act, nor the regulations specify the manner in

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> 5 U.S.C. § 8107(c)(19).

which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>6</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>7</sup> 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.<sup>8</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>9</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>10</sup> The A.M.A., *Guides* converts the sum of the total decibel losses in Table 11-2 to reach appellant’s binaural hearing loss for schedule award purposes.<sup>11</sup> The sum of the above-mentioned frequencies for the worse ear is read at the side and the sum of the frequencies for the better ear is read at the bottom. At the intersection of the row for the worse ear and the column for the better ear is the hearing impairment percentage.

### ANALYSIS

The Office medical adviser applied the Office’s standardized procedures to the September 30, 2002 audiogram performed for Dr. Phillips. Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 25, 20, 70 and 80, respectively for a total of 195 decibels. When divided by 4, the result is an average hearing loss of 48.75 decibels. The average loss of 48.75 is reduced by 25 decibels to equal 23.75, which, when multiplied by the established factor of 1.5, results in a 35.6 percent monaural hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels, revealed decibel losses of 20, 15, 20 and 40, respectively, for a total of 95 decibels. When divided by 4, the result is an average hearing loss of 23.75 decibels. The average loss of 23.75 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the left ear. The intersection at 195 read from the left side and 0 read from the bottom of the table results in a 5.9 or 6 percent hearing loss according to the A.M.A., *Guides* 248-49, Table 11-2.

In support of his claim for an additional schedule award, appellant submitted the July 11, 2002 audiogram performed by Ms. Coughlin for Dr. Phillips. This audiogram had previously

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<sup>6</sup> 20 C.F.R. § 10.404 (1999); *Donald E. Stockstad*, 53 ECAB \_\_\_ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, (Docket 01-1570, issued August 13, 2002).

<sup>7</sup> A.M.A., *Guides* 250.

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

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 248.

been discarded as invalid and unreliable since it had not been recently calibrated and, therefore, it was determined not to be representative of appellant's loss of hearing.<sup>12</sup>

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation.<sup>13</sup> Since the binaural hearing loss in this case is 6 percent, appellant would be entitled to 6 percent of 200 weeks or 12 weeks of compensation. The Office's June 16, 2003 decision awarded appellant 12 weeks of compensation for a 6 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.<sup>14</sup> The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks.<sup>15</sup> The Office medical adviser found that the hearing loss in the right ear was 35.6 percent and in the left ear was 0 percent. Using the Office procedure of rounding to the next whole number, the monaural loss for the right ear is 36 percent and 0 percent for the left ear.<sup>16</sup> Thirty-six percent of 52 weeks is 18.72 weeks of compensation and 0 percent of 52 weeks is 0 weeks of compensation, resulting in a total of 18.72 weeks of compensation. As this is more than the 12 weeks of compensation for binaural hearing loss awarded by the Office, the Office should have issued the schedule award for a 36 percent hearing loss in the right ear and a 0 percent hearing loss in the left ear. The Board, therefore, finds that appellant is entitled to an additional 6.72 weeks of compensation.

### CONCLUSION

The Board finds that appellant is entitled to a schedule award for a 36 percent loss of hearing in his right ear and a 0 percent loss of hearing in his left ear.

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(4) (September 1995).

<sup>13</sup> 5 U.S.C. § 8107(c)(13)(B).

<sup>14</sup> FECA Program Memorandum No. 181 (issued November 26, 1974). See *Joseph J. Tillo*, 39 ECAB 1345, 1348 (1988).

<sup>15</sup> 5 U.S.C. § 8107(c)(13)(A).

<sup>16</sup> 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) (November 1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18 and June 16, 2003 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: July 27, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member