

noise at work since 1966 including noise from engines, electric tools and vehicles. He retired from the employing establishment effective October 1, 2004.¹

In August 2005, the Office referred appellant to Dr. Robert Marwick, a Board-certified otolaryngologist, for otologic and audiologic testing. On September 28, 2005 Dr. Marwick concluded that appellant had a mild to profound sensorineural hearing loss in the left ear and a profound sensorineural hearing loss in the right ear. He found that work-related noise exposure contributed to the hearing loss in the left and right ears. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 25, 35 and 55 respectively. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 70, 80, 105 and 105 respectively.

On October 4, 2005 the district medical adviser calculated that appellant had a 9.375 percent left monaural hearing loss, a 97.5 percent right monaural hearing loss and a 24.0625 percent binaural hearing loss. The Office accepted that he sustained a work-related bilateral hearing loss. Appellant filed a claim for a schedule award due to his accepted hearing loss. In a July 6, 2006 award of compensation, the Office granted appellant a schedule award for a 24 percent binaural hearing loss. The award ran from September 28, 2005 to August 29, 2006 for 48 weeks.²

At a November 8, 2006 hearing, before an Office hearing representative, appellant argued that he should receive additional schedule award compensation. In a decision dated and finalized January 9, 2007, the Office hearing representative set aside the Office's July 6, 2006 decision and remanded the case to the Office to determine whether appellant would receive a larger award if he received compensation for his two monaural hearing losses rather than for his binaural hearing loss.

On remand to the Office, an Office claims examiner calculated that appellant's 9 percent left monaural hearing loss entitled him to 4.68 weeks of compensation and that his 98 percent right monaural hearing loss entitled him to 50.96 weeks of compensation. She determined that appellant would receive a total of 55.64 weeks of compensation if he received compensation for his two monaural hearing losses rather than for his binaural hearing loss. The examiner found that, as appellant only received 48 weeks of compensation for his 24 percent binaural loss, granting him compensation for his two monaural hearing losses would be appropriate and would entitle him to an extra 7.64 weeks of compensation (55.64 weeks minus 48 weeks).

In a January 22, 2007 award of compensation, the Office granted appellant a schedule award, based on the right and left monaural hearing loss ratings, for an additional 7.64 weeks of compensation. The award ran from August 30 to October 23, 2006.

¹ The record contains numerous audiograms memorializing testing obtained between 1979 and 2004.

² The 24.0625 percent figure for binaural hearing loss was properly rounded down to 24 percent. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 2003); *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999). The Office initially indicated that appellant would receive compensation at the 66 2/3 percent pay rate but later corrected the award to indicate that he would receive compensation at the 75 percent pay rate because he had a dependent. See 5 U.S.C. § 8110(b).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

The schedule award provision of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.¹² The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss¹³ and a maximum of 52 weeks of compensation as the award for total monaural hearing

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ A.M.A., *Guides* 224, 225 (4th ed. 1993); A.M.A., *Guides* at 226-51 (5th ed. 2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹² 5 U.S.C. § 8107(c).

¹³ 5 U.S.C. § 8107(c)(13)(B).

loss.¹⁴ A partial loss of hearing is compensated at a proportionate rate.¹⁵ If the allowance for monaural hearing loss would be greater than that for binaural hearing loss, the claimant should receive the benefit of the more favorable allowance and should be compensated based on the sum of the monaural impairments.¹⁶

ANALYSIS

On October 4, 2005 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 left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 25, 35 and 55 respectively. These decibel losses were totaled at 125 decibels and were divided by 4 to obtain the average hearing loss of 31.25 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 6.25 which was multiplied by the established factor of 1.5 to compute an 9.375 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 70, 80, 105 and 105 respectively. These decibel losses total 360 decibels and when divided by 4 result in an average hearing loss of 90 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals 65 which when multiplied by the established factor of 1.5 to equal a 97.5 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the left ear, 9.375 percent, was multiplied by the established factor of 5, added to the 97.5 percent loss in the right ear and this sum was divided by the established factor of 6 to calculate a 24.0625 or 24 percent binaural hearing loss.¹⁷

The Office initially granted appellant a schedule for a 24 percent binaural hearing loss and he received 48 weeks of compensation in connection with this award.¹⁸ After the Office hearing representative remanded the case, the Office properly determined that it was appropriate to grant appellant a schedule award for his 98 percent right monaural hearing loss and his 9 percent left monaural hearing loss because this form of schedule award compensation granted him more compensation than an award for binaural hearing loss.¹⁹ The Office properly calculated that appellant's 9 percent left monaural hearing loss entitled him to 4.68 weeks of compensation and that his 98 percent right monaural hearing loss entitled him to 50.96 weeks of

¹⁴ 5 U.S.C. § 8107(c)(13)(A).

¹⁵ 5 U.S.C. § 8107(c)(19).

¹⁶ FECA Program Memorandum No. 181 (issued November 26, 1974).

¹⁷ The record contains several audiograms obtained by the employing establishment, but none of these was certified by a physician as accurate. The Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹⁸ The Office multiplied the 24 percent impairment rating times the figure of 200 weeks of compensation for total binaural hearing loss. See *supra* note 13 and accompanying text.

¹⁹ See *supra* note 16 and accompanying text. The Office properly rounded the 97.5 percent right monaural hearing loss to 98 percent and the 9.375 percent left monaural hearing loss to 9 percent. See *supra* note 2.

compensation.²⁰ It determined that appellant would receive a total of 55.64 weeks of compensation if he received compensation for his two monaural hearing losses rather than for his binaural hearing loss. The Office properly found that, as appellant only received 48 weeks of compensation for his 24 percent binaural hearing loss, granting him compensation for his two monaural hearing losses would be appropriate and would entitle him to an extra 7.64 weeks of compensation. The Office then granted appellant an additional schedule award in this amount.

The record indicates that appellant has already received the appropriate amount of compensation for his hearing loss. Because he has been fully compensated for his 98 percent right monaural hearing loss and his 9 percent left monaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to receive schedule award compensation in addition to the compensation he received for his 98 percent right monaural hearing loss and his 9 percent left monaural hearing loss.

²⁰ The Office multiplied the 9 percent rating for right monaural hearing loss times the figure of 52 weeks of compensation for total monaural hearing loss and the 98 percent rating for left monaural hearing loss times the figure of 52 weeks of compensation for total monaural hearing loss. *See supra* note 14 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 22, 2007 decision is affirmed.

Issued: August 6, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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