



pumps, boats and chain saws. The record contains numerous audiograms detailing the results of testing obtained between 1997 and 2005.

The Office referred appellant to Dr. Montra Kanok, a Board-certified otolaryngologist, for otologic and audiologic testing. On May 13, 2006 she determined that appellant had a sensorineural high-frequency hearing loss in both ears which was most likely aggravated by prolonged exposure to noise during his work for the employing establishment. Dr. Kanok stated that appellant noticed high-pitched tinnitus in both ears but reported that he has been getting used to it and it no longer bothered him. May 11, 2006 audiometric testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 15 and 75 respectively. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 5 and 65 respectively. Dr. Kanok stated that appellant had 100 percent discrimination in both ears with the sound level of 40 decibels for both regular and high-frequency words.

On June 26, 2006 the Office accepted that appellant sustained employment-related bilateral hearing loss. On September 8, 2006 Dr. Brian Schindler, a Board-certified otolaryngologist serving as an Office medical director, calculated that appellant sustained a 5.6 percent monaural hearing loss in his left ear and rounded the figure up to 6 percent. He indicated that appellant reached maximum medical improvement on May 11, 2006 and stated that he agreed that appellant's hearing loss was employment related.

By decision dated February 20, 2007, the Office granted appellant a schedule award for a six percent monaural hearing loss in his left ear. The award ran for 3.12 weeks from May 11 to June 1, 2006.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second,

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> A.M.A., *Guides* 224-25 (4<sup>th</sup> ed. 1993); A.M.A., *Guides* at 226-51 (5<sup>th</sup> ed. 2001).

the losses at each frequency are added up and averaged.<sup>5</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>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

### ANALYSIS

On September 8, 2006 Dr. Schindler, a Board-certified otolaryngologist serving as the Office medical adviser, reviewed the otologic and audiologic testing performed on appellant for Dr. Kanok, a Board-certified otolaryngologist serving as an Office referral physician. He 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 cycles per second revealed decibel losses of 15, 10, 15 and 75 respectively. These decibel losses were totaled at 115 decibels and were divided by 4 to obtain the average hearing loss of 28.75 decibels. This average loss was reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 3.75 which was multiplied by the established factor of 1.5 to compute a 5.6 percent hearing loss in the left ear. The 5.6 figure was properly rounded up to six percent.<sup>10</sup> Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 5 and 65 respectively. These decibel losses were totaled at 95 decibels and were divided by 4 to obtain the average hearing loss of 23.75 decibels. This average loss was reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than 0 which constituted a 0

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

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

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

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

<sup>9</sup> *Donald Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>10</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b, 4b(2) (October 1990).

percent hearing loss in the right ear. The Board finds that Dr. Schindler properly applied the appropriate standards to determine that appellant has a six percent monaural hearing loss in his left ear.<sup>11</sup>

On appeal, appellant contends that the schedule award he received is not adequate compensation for his monaural hearing loss. 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.<sup>12</sup> The Act establishes a maximum of 52 weeks of compensation as the award for total monaural hearing loss.<sup>13</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>14</sup> so appellant's award of compensation for a six percent monaural hearing loss entitled him to six percent of 52 weeks of compensation or 3.12 weeks of compensation. The record indicates that appellant received this amount of compensation. Because he has been fully compensated for the percent monaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, appellant is not entitled to any additional compensation.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a six percent monaural hearing loss in his left ear.

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<sup>11</sup> The record contains several audiograms obtained by the employing establishment. 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). None of the audiograms of record were certified by a physician as accurate. Dr. Kanok stated that appellant noticed high-pitched tinnitus in both ears but reported that he has been getting used to it and it no longer bothered him. An impairment percentage of up to five percent may be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living. See A.M.A., *Guides* 246 (5<sup>th</sup> ed. 2001). There is no indication in the record that appellant has tinnitus that meets this standard.

<sup>12</sup> 5 U.S.C. § 8107(c).

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

<sup>14</sup> 5 U.S.C. § 8107(c)(19).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 20, 2007 decision is affirmed.

Issued: October 11, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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