

noise and heavy ground equipment from 82 to 117 decibels. Appellant wore appropriate hearing protection. He first became aware of his condition and related it to his federal employment on January 24, 2001. Appellant explained that he delayed filing the claim as the employing establishment was aware of his hearing loss as of January 24, 2001. He submitted a February 13, 2001 waiver from the employing establishment acknowledging his hearing loss but allowing him to continue working as a flight instructor.

In a January 2, 2008 letter, the Office advised appellant of the additional evidence needed to establish his claim. It instructed him to submit audiometric findings and other test results from his attending physician.

Appellant submitted employing establishment audiograms dated from April 20, 1993 to September 21, 2005, obtained through a hearing conservation program.¹ The employing establishment audiograms show a progressive high frequency hearing loss. In an April 25, 2001 report, an employing establishment health employee noted that appellant had a high frequency hearing loss in his right ear and was counseled regarding this loss. Appellant also submitted unsigned audiograms from a private hospital dated from August 31, 2000 to June 21, 2006.

The Office obtained a second opinion from Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist. In a May 28, 2008 report, Dr. Pappas reviewed a history of occupational noise exposure and performed a clinical examination. He diagnosed an asymmetric sensorineural hearing loss, greater on the right. Dr. Pappas ordered a magnetic resonance imaging scan to rule out retrocochlear pathology. Audiometric testing performed that day for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 5, 10, 10 and 50 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 15, 5 and 25 decibels.

On June 13, 2008 the Office referred Dr. Pappas' report and audiometric findings to an Office medical adviser for a determination of impairment according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a June 17, 2008 report, the Office medical adviser totaled the decibel losses for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 5, 10, 10 and 50 to equal 75. He then divided this total by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by the 25 decibel "fence" to equal zero, resulting in a zero percent loss of hearing for the right ear. The medical adviser then totaled the 5, 15, 5 and 25 decibel losses in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 50. He then divided this total by 4 to obtain the average hearing loss at those cycles of 12.5 decibels. The average of 12.5 decibels was then reduced by

¹ The Board has held that a program of annual audiometric examination conducted by an employing establishment in conjunction with an employee testing program, if such audiograms demonstrate a hearing loss, is sufficient to constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury. See *James A. Sheppard*, 55 ECAB 515 (2004). Appellant participated in a hearing conservation program from 1993 through 2005. In an April 25, 2001 report, the employing establishment acknowledged appellant's right high frequency hearing loss. The Board finds that this report is sufficient to constructively establish the employing establishment's actual knowledge of appellant's hearing loss.

25 decibels to equal zero, resulting in a zero percent loss of hearing for the left ear. The Office medical adviser found that appellant had a nonratable bilateral sensorineural hearing loss.

On June 13, 2008 the Office accepted that appellant sustained a bilateral hearing loss in the performance of duty. Appellant claimed a schedule award on June 30, 2008.

By decision dated July 14, 2008, the Office denied appellant's schedule award claim on the grounds that his accepted bilateral hearing loss was not ratable, finding that the Office medical adviser properly applied the A.M.A., *Guides* to Dr. Pappas' evaluation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² provides for compensation to employees sustaining permanent loss or loss of use, of specified members of the body. 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 which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, 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* (5th ed. 2001), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Office accepted that appellant sustained a binaural hearing loss due to hazardous noise exposure at work. To determine appellant's entitlement to a schedule award, the Office obtained a second opinion report and audiometric test results from Dr. Pappas, a Board-certified

² 5 U.S.C. §§ 8101-8193.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

otolaryngologist. The Office then referred Dr. Pappas' findings to an Office medical adviser for calculation of a schedule award according to the A.M.A., *Guides*.

The Office medical adviser properly applied the Office's standardized procedures to the May 28, 2008 audiogram obtained by Dr. Pappas.⁹ Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 15, 5 and 25 decibels, respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss per cycle of 18.75. The average of 18.75 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear.¹⁰ Following the same mathematical procedure, the medical adviser totaled the 5, 10, 10 and 50 decibel losses in the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 75. He divided the total by 4 to obtain the average hearing loss at those cycles of 18.75 decibels, reduced by 25 decibels to equal zero. The medical adviser then computed that appellant had a zero percent binaural hearing loss. Based on the Office medical adviser's interpretation of Dr. Pappas' findings, the Office denied appellant's schedule award claim.

The Board finds that the Office medical adviser applied the proper standards to the findings in the May 28, 2008 report of Dr. Pappas and accompanying audiogram performed on his behalf. The result is a zero percent binaural hearing loss. The Board further finds that the Office medical adviser properly relied upon the May 28, 2008 audiogram as it was part of Dr. Pappas' evaluation and met all the Office's standards.¹¹ Therefore, the Office properly found that appellant had a zero percent binaural hearing loss due to hazardous noise exposures at work.

CONCLUSION

The Board finds that appellant has not established that he sustained a ratable hearing loss in the performance of duty.

⁹ While the record contains prior audiograms, there is insufficient information accompanying these audiograms to demonstrate that they met the Office's standards for audiograms used in the evaluation of permanent hearing impairments. *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹⁰ The decibel fence is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 decibels or less. *See A.M.A., Guides* at 250.

¹¹ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2008 is affirmed.

Issued: May 6, 2009
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