



off work due to an unspecified disability from 1990 to 1996. Appellant returned to work in February 1996 as an optometry clerk in an office setting, with ambient noise at 50 to 80 dBA.

A nonhearing conservation hearing test audiogram performed at the employing establishment on June 8, 2007 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 10, 5, 30 and 25 respectively.<sup>1</sup> Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 35 and 65 decibels. It is unclear from the record whether this audiogram was signed or reviewed by a physician.

Dr. Kim E. Schmitt, an attending Board-certified otolaryngologist, obtained audiometric test results on June 8, 2007. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 20, 30 and 40 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, 5, 25 and 35 decibels. Dr. Schmitt did not state whether appellant had avoided exposure to hazardous noise for any period prior to audiometric testing.

In a November 5, 2007 report, Dr. Ting J. Tai, an employing establishment physician, opined that appellant's occupational exposure was insufficient to cause a ratable hearing loss. Also a prior 2006 audiogram did not show a ratable hearing loss.<sup>2</sup>

In a November 27, 2007 letter, the Office advised appellant of the additional evidence needed to establish his claim. It instructed appellant to submit audiometric findings and other test results from his attending physician. Appellant submitted a statement summarizing his occupational noise exposure.

The Office obtained a second opinion from Dr. Jeffrey Scott Robertson, a Board-certified otolaryngologist. In a January 14, 2008 report, Dr. Robertson provided a history of occupational noise exposure and performed a clinical examination. Audiometric testing performed that day for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 5, 25 and 30 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 0, 10, 35 and 55 decibels. Dr. Robertson diagnosed a mild to severe bilateral sensorineural hearing loss, in excess of normal presbycusis. He opined that this hearing loss was due, in part, to hazardous noise exposure at the employing establishment. Dr. Robertson recommended hearing aids.

On April 2, 2008 the Office accepted that appellant sustained a bilateral sensorineural hearing loss in the performance of duty. Appellant claimed a schedule award on May 15, 2008.

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<sup>1</sup> There is no evidence of record that appellant participated in an employing establishment hearing conservation program.

<sup>2</sup> An August 16, 2006 audiogram performed by Dear Health Clinic showed results for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 30 and 25 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 35 and 55 decibels. This audiogram was not signed or reviewed by a physician.

On May 19, 2008 the Office referred Dr. Robertson's report and audiometric findings to an Office medical adviser for consideration of a schedule award rating according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a May 20, 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, 5, 25 and 30 to equal 65. He then divided this sum by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by the 25 decibel "fence" to equal zero, resulting in no (zero percent) loss of hearing for the right ear. The Office medical adviser then totaled the 0, 10, 35 and 55 decibel losses in the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 100. He then divided this sum by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels to equal zero, resulting in no (zero percent) loss of hearing for the left ear. The Office medical adviser found that appellant had a nonratable bilateral sensorineural hearing loss.

By decision dated September 25, 2008, the Office denied appellant's schedule award claim on the grounds that his accepted bilateral hearing loss was not ratable. It found that the Office medical adviser properly applied the A.M.A., *Guides* to Dr. Robertson's findings and determined that appellant's hearing loss was not ratable.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> 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* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<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 up and averaged.<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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>5</sup> A.M.A., *Guides*, 250.

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

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

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

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, it obtained a second opinion report and audiometric test results from Dr. Robertson, a Board-certified otolaryngologist. The Office then referred Dr. Robertson's 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. Robertson.<sup>10</sup> Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 0, 10, 35 and 55 decibels, respectively. These decibel losses totaled 100 and divided by 4 to obtain the average hearing loss per cycle of 25. The average of 25 was then reduced by the 25 decibel fence to equal zero decibels for the left ear.<sup>11</sup> Following the same mathematical procedure, the Office medical adviser added the 5, 5, 25 and 30 decibel losses in the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps to equal 65. He divided the sum by 4 to obtain the average hearing loss at those cycles of 16.25 decibels, reduced by 25 decibels to equal zero. The Office medical adviser then computed that appellant had a zero percent binaural hearing loss. Based on his interpretation of Dr. Robertson's 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 Dr. Robertson's January 14, 2008 report 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 January 14, 2008 audiogram as it was part of Dr. Robertson's evaluation and met all the Office's standards.<sup>12</sup> Therefore, the Office properly found that appellant had a zero percent binaural hearing loss due to hazardous noise exposures at work.

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

<sup>9</sup> *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>10</sup> 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).

<sup>11</sup> 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* 250.

<sup>12</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a) (September 1994).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 25, 2008 is affirmed.

Issued: October 5, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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