

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. ZINK and DEPARTMENT OF THE ARMY,
WATERVLIET ARSENAL, Watervliet, NY

*Docket No. 02-917; Submitted on the Record;
Issued March 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for his tinnitus.

On October 23, 2002 appellant, then a 49-year-old machinist, filed a claim alleging that he developed bilateral hearing loss due to tinnitus, causally related to running machines for 28 years. He submitted multiple audiogram results and a May 18, 2000 report in which he was diagnosed as having bilateral high tone sensorineural hearing loss with tinnitus.

An audiogram on December 22, 2000 revealed the following results at 500, 1,000, 2,000 and 3,000 cycles per second (Hertz) in the right ear the decibel losses were noted to be 5, 5, 10 and 10 respectively, and in the left ear were noted to be 10, 10, 15 and 35 respectively. Speech reception thresholds were noted to be 5 decibels in the right ear and 10 decibels in the left ear, which was a 92 percent auditory discrimination and was within normal limits.

On February 11, 2001 the Office of Workers' Compensation Programs calculated that appellant had a zero percent binaural hearing loss according to the Fourth Edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

By decision dated February 14, 2001, the Office rejected appellant's claim for compensation or a schedule award finding that, under the fourth edition of the A.M.A., *Guides* his hearing loss was not severe enough to be ratable and therefore he was not entitled to a schedule award.

On May 16, 2001 Dr. Gavin Setzen, a Board-certified otolaryngologist, examined appellant with normal results and diagnosed persistent bilateral sensorineural hearing loss and tinnitus. Dr. Setzen opined that appellant's tinnitus was due to noise-induced sensorineural hearing loss which was secondary to noise exposure at work.

Appellant requested an oral hearing which was held on August 28, 2001. By decision dated December 14, 2001, the hearing representative affirmed the February 14, 2001 decision of

¹ A.M.A., *Guides*, (4th ed. 1993), pp. 223-28.

the Office. The hearing representative found that appellant's tinnitus was not compensable as his hearing loss was not ratable.

The Board finds that appellant is not entitled to a schedule award for his tinnitus.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent loss, or loss of use, of scheduled members of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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 A.M.A., *Guides* fifth edition has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

Under the A.M.A., *Guides*, hearing loss is evaluated by determining the decibel loss at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* pointed out, losses below 25 decibels result in no impairment in a person's ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by 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

Under FECA Bulletin No. 01-05, effective February 1, 2001, the fifth edition of the A.M.A., *Guides* became applicable to all hearing loss determinations. The fifth edition, therefore, is applicable to this case. The Board finds that, for the purposes of determining whether appellant has a ratable hearing loss, the fourth and fifth editions of the A.M.A., *Guides* contains the same formula for determining the ratability of hearing loss.

In this case, the Office medical adviser applied the ratability formula described above to the audiogram results obtained during the December 22, 2000 audiometric evaluation. The medical adviser determined that the losses for the right ear at 500, 1,000, 2,000 and 3,000 decibels were 5, 5, 10 and 10 decibels respectively, which when totaled, equaled 30 and when divided by 4, equaled an average decibel loss of 7.5 decibels. He then reduced this decibel average by 25 decibels, resulting in a balance of 0 decibels, meaning that no ratable impairment was demonstrated, and that no impairment was presumed to exist in appellant's ability to hear

² 5 U.S.C. § 8101 *et seq.*; see 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Charles H. Potter*, 39 ECAB 645 (1988).

⁷ FECA Program Memorandum No. 272 (issued February 24, 1986).

everyday sounds under everyday listening conditions with his right ear. The Office medical adviser repeated the same procedure with the decibel losses measured in appellant's left ear which totaled 70 and averaged 17.5 decibels, which, when the fence of 25 decibels was subtracted, resulted in a balance of 0 decibels, meaning that no ratable impairment was demonstrated and that no impairment was presumed to exist in appellant's ability to hear everyday sounds under everyday listening conditions with his left ear.

As appellant has no ratable hearing loss, the presence of tinnitus is not compensable. Under the fifth edition of the A.M.A., *Guides*, when determining if tinnitus is compensable, the text refers to "measurable" hearing loss instead of "ratable" hearing loss. The Board finds that "measurable" is synonymous with "ratable" as the remainder of the fifth edition text is identical to the text of the fourth edition, which noted that measured hearing decibel losses of less than 25 decibels do not affect the claimant's ability to hear everyday sounds under everyday listening conditions.⁸ As appellant's measured hearing loss is not ratable, *i.e.*, below the threshold for impairing the ability to hear everyday sounds under everyday listening conditions, his tinnitus condition is not compensable. In the absence of a measurable hearing loss, there is no basis for a schedule award for tinnitus.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 14, 2001 is hereby affirmed.

Dated, Washington, DC
March 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ If a measurable loss is less than 25 decibels, it has no impact on everyday listening and is insignificant, but if it is greater than 25 decibels, it may be presumed to have some impact on a claimant's ability to hear everyday speech under everyday conditions or impact his ability to perform activities of daily living and hence is ratable under the fifth edition of the A.M.A., *Guides* and the Act. Accordingly, only ratable losses are considered to be significant, and measurable losses below 25 decibels are considered to be insignificant, such that the meaning of "measurable" losses referred to in the fifth edition of the A.M.A., *Guides* is synonymous with that of ratable losses under the Act.