

percent binaural hearing loss and set aside and remanded the case on the issue of whether appellant's work-related tinnitus warranted an additional schedule award. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.¹

On remand, the Office referred the case file to an Office medical adviser and requested that he review the April 10, 2000 report of Dr. Brian Perry, a Board-certified otolaryngologist and second opinion physician, to determine whether appellant's "tinnitus should be part of the accepted condition or only noise-induced hearing loss." On May 12, 2004 the Office medical adviser stated that the record did not include confirmatory evidence or confirmatory tests for tinnitus, and opined that there was inadequate evidence to support tinnitus as an accepted condition.

By decision dated June 10, 2004, the Office denied appellant's claim because "the requirements have not been met for entitlement to a schedule award for tinnitus."

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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*, (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

The A.M.A., *Guides*, note that tinnitus, in the presence of unilateral or bilateral hearing impairment, may impair speech discrimination and provides for up to a five percent impairment rating for tinnitus in the presence of a measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.⁵

ANALYSIS

On May 5, 2004 the Office requested the Office medical adviser to provide an opinion regarding whether appellant's tinnitus "should be part of the accepted condition or only noise-

¹ Docket No. 04-160 (issued March 31, 2004).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Willie C. Howard*, 55 ECAB ____ (Docket Nos. 04-342 & 04-464, issued May 27, 2004).

⁵ See A.M.A., *Guides* 246 (5th ed. 2001). See also *Juan A. Trevino*, 54 ECAB ____ (Docket No. 02-1602, issued January 17, 2003).

induced hearing loss,” whether the diagnosis of tinnitus was “supported by the history, physical examination and test,” and to explain if appellant was due a schedule award for the tinnitus if work related. On May 12, 2004 the Office medical adviser stated that he had reviewed the statement of accepted facts and the Board’s March 31, 2004 decision and noted that tinnitus was an accepted condition. However, he found that there were “no confirmatory physical signs or confirmatory tests with this disorder. In my opinion, there is inadequate evidence in the record to include tinnitus as an accepted condition.” The medical adviser added that “[t]innitus is not recognized as an impairing entity in addition to hearing loss.” The Office on June 10, 2004 denied appellant’s claim for a schedule award finding that there was insufficient medical evidence to accept tinnitus and that tinnitus was not recognized as an impairing entity in addition to a hearing loss.

The Board notes that the Office had previously accepted appellant’s tinnitus as work related on March 16, 2000. Because the Office previously accepted that appellant’s tinnitus was work related, the referral to the Office medical adviser for an opinion as to whether appellant’s tinnitus “should be part of the accepted condition” was in error⁶ and inconsistent with the Board’s remand instructions in the prior appeal.⁷ The Office’s determination in its June 10, 2004 decision that tinnitus is not an impairing entity in addition to a hearing loss is also incorrect as the A.M.A., *Guides* state: “Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”⁸ The Office’s June 10, 2004 decision therefore will be set aside and the case remanded to determine whether appellant’s work-related tinnitus entitles him to additional impairment for schedule award purposes.

CONCLUSION

The case will be remanded to the Office to determine if appellant’s work-related tinnitus caused a disability warranting an additional schedule award.

⁶ The Office’s decision does not purport to rescind the Office’s acceptance of tinnitus.

⁷ The Board has final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director of the Office. Otherwise, there could be no finality of decisions and the whole appeals procedure would be nullified and questions would remain moot. *See Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949).

⁸ A.M.A., *Guides* at 246.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further development in accordance with this decision.⁹

Issued: December 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ Appellant states in his appeal that it appears his whole claim was denied. Medical expenses as a result of his accepted conditions will be processed for payment in accordance with Office procedures.