



## **FACTUAL HISTORY**

On February 27, 2001 appellant, then a 58-year-old coal hauling foreman, filed an occupational disease claim alleging that on September 27, 1977 he first realized that his hearing loss in both ears was caused by factors of his employment.<sup>1</sup> In support of his claim, appellant submitted employment records and medical documents including audiograms performed by the employing establishment and a February 12, 2001 report from Dr. David T. Upchurch, a Board-certified otolaryngologist, finding that he had tinnitus of the left ear due to the “possible” contributing factor of a history of exposure to noisy heavy equipment at work and bilateral sensorineural hearing loss of the noise-induced type.

On September 28, 2001 an Office medical adviser reviewed the evidence of record and determined that appellant sustained noise-induced bilateral hearing loss. Subsequently, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Frank Little, Jr., a Board-certified otolaryngologist, for a second opinion medical examination to determine the cause, extent and degree of appellant’s hearing loss and its link to his federal employment.

On January 11, 2002 Dr. Little submitted a report in which he diagnosed sensorineural hearing loss and stated, among other things, that appellant’s hearing loss was due to noise exposure in his federal employment. He explained that the work environment was sufficient to cause the loss and there were no other relevant factors. He recommended noise protection and hearing aids for appellant. An accompanying audiogram performed on January 8, 2002 and signed by Dr. Little reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second. Testing of the right ear revealed decibel losses of 25, 40, 30 and 55, respectively and testing of the left ear revealed decibel losses of 25, 35, 30 and 45, respectively.

On January 30, 2002 an Office medical adviser reviewed Dr. Little’s report and audiometric test results and concluded that appellant was entitled to a schedule award for a 14 percent bilateral sensorineural hearing loss. He noted that appellant’s date of maximum medical improvement was January 8, 2002, the date of Dr. Little’s examination.

By letter dated March 5, 2002, the Office accepted appellant’s claim for binaural noise-induced hearing loss. In a December 26, 2002 letter, the Office advised appellant that he had a 14 percent noise-induced bilateral hearing loss based on the findings of the Office medical adviser. The Office further advised appellant that he and the employing establishment should complete an enclosed claim for compensation for schedule award benefits (Form CA-7) and return it within seven days of receipt. On January 10, 2003 the Office received appellant’s completed Form CA-7.

In a January 22, 2003 decision, the Office granted appellant a schedule award for a 14 percent binaural loss of hearing. Appellant requested reconsideration in a June 19, 2003 letter. He asserted that he had constant ringing in his left ear and hearing aids did not help this problem. Appellant also asserted that the hearing test he took for hearing aids at the office of Dr. Roy L. Seals, a Board-certified otolaryngologist, showed that he had severe hearing loss.

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<sup>1</sup> The Board notes that appellant retired from the employing establishment on September 26, 1997.

Appellant's letter was accompanied by the results of Dr. Seals' April 4, 2003 audiogram. The audiogram contained hearing thresholds at 250, 500, 1,000, 2,000, 4,000 and 8,000.

By letter dated July 10, 2003, the Office advised the employing establishment that appellant had requested reconsideration of its decision and invited the employing establishment to submit any comments and/or documents it believed were relevant or pertinent to the issue in question. The employing establishment did not respond.

In an August 12, 2003 decision, the Office denied appellant's request for modification based on a merit review of his claim. The Office also found that Dr. Seals' April 4, 2003 report was insufficient to establish that the ringing in appellant's ears constituted tinnitus or that he had a greater hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>4</sup> However, neither the Act nor the regulation specify the manner in which the percentage of impairment shall be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second the losses at each frequency are added up and averaged.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> *Supra* note 3.

<sup>6</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

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

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

amount of the binaural hearing loss.<sup>9</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

In reviewing Dr. Little's January 8, 2002 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear revealed decibels losses of 25, 40, 30 and 55, respectively for a total of 150 decibels. When divided by 4, the result is an average hearing loss of 37.50 decibels. The average loss of 37.50 is reduced by 25 decibels to equal 12.5, which when multiplied by the established factor of 1.5, resulted in an 18.75 percent monaural hearing for the right ear.

Testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 35, 30 and 45, respectively, for a total of 135 decibels. When divided by 4, the result is an average hearing loss of 33.75 decibels. The average loss of 33.75 is reduced by 25 decibels to equal 8.75, which when multiplied by the established factor of 1.5, resulted in a 13.13 percent monaural hearing for the right ear. The 13.13 percent hearing loss for the left ear, when multiplied by 5, yielded a product of 65.65. The 65.65 was then added to the 18.75 percent hearing loss for the left ear to obtain a total of 84.4. The 84.4 was then divided by 6, in order to calculate a binaural loss of hearing of 14.06 percent. The Board finds that the January 8, 2002 audiogram does not establish that appellant had more than a 14 percent binaural hearing loss.

Appellant submitted Dr. Seals' April 4, 2003 audiogram report revealing testing of the right and left ears at the frequency levels of 250, 500, 1,000, 2,000, 4,000 and 8,000 cycles per second. This audiogram did not provide testing at 3,000 cycles per second and thus, it cannot serve as a basis for making a schedule award determination under the A.M.A., *Guides*. As the evidence of record does not establish that appellant has greater than a 14 percent binaural loss of hearing, for which he already received a schedule award, he is not entitled to an additional schedule award.

### **LEGAL PRECEDENT -- ISSUE 2**

Regarding tinnitus, the A.M.A., *Guides* states:

*"Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to 5 percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."*<sup>11</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Donald E. Stockstad*, 53 ECAB \_\_ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

<sup>11</sup> A.M.A., *Guides*, *supra* note 6 at 246.

## **ANALYSIS -- ISSUE 2**

Appellant submitted Dr. Upchurch's February 12, 2001 medical report finding that he had tinnitus of the left ear due to the "possible" contributing factor of a history of exposure to noisy heavy equipment at work. The Board notes that it is well established that preexisting impairments of the body are to be included when determining the amount of a schedule award for an employment-related permanent impairment.<sup>12</sup> Consequently, the Office must take into account appellant's tinnitus in calculating his schedule award. Therefore, the case must be remanded for the Office to refer appellant to an appropriate specialist to determine whether he has any impairment due to his preexisting tinnitus. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

## **CONCLUSION**

The Board finds that appellant has failed to establish that he has more than a 14 percent binaural hearing loss, for which he received a schedule award. The Board, however, finds that the case is not in posture for decision as to whether appellant has established that he is entitled to an increased schedule award for tinnitus.

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<sup>12</sup> *Walter R. Malena*, 46 ECAB 983 (1995); Cf. *Juan A. Trevino*, 54 ECAB \_\_\_\_ (Docket No. 02-1602, issued January 17, 2003) (finding that appellant was not entitled to a schedule award for tinnitus because his hearing loss was not ratable).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' January 22, 2003 decision is affirmed. The Office's August 12, 2003 decision is affirmed in part with respect to the finding that appellant has failed to establish that he has more than a 14 percent binaural hearing loss, for which he received a schedule award and set aside in part and the case is remanded for further action consistent with this decision with respect to entitlement to an increased schedule award for tinnitus.

Issued: July 7, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
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