



aviation bilaterally. He further stated that in April 1999 and on February 26, 2003 he was given a hearing test which revealed a significant threshold shift and hearing loss due to overexposure to hazardous or prolonged noise. Appellant submitted employment records, a statement regarding his hearing loss and noise exposure, the employing establishment's controversion of his claim, documents regarding a previous hearing loss claim. He also submitted medical evidence, which included audiograms performed by the employing establishment and medical treatment notes.

Upon review of the case record, the Office referred appellant along with his medical records, a statement of accepted facts and a list of specific questions to Dr. Ronald F. Gordon, a Board-certified otolaryngologist, for a second opinion medical examination by letter dated July 14, 2003. In an August 7, 2003 medical report, he provided a history of his employment at the employing establishment, decreased hearing loss over several years and uvulopalatopharyngoplasty surgery. He noted that there was no history of otitis media, ear surgery or injuries, use of ototoxic drugs and fluctuation in hearing and family hearing loss. Dr. Gordon also noted that appellant had no signs of rotary vertigo and noise exposure away from his work environment. He submitted an August 4, 2003 audiogram performed by Lisa Christensen, an audiologist. Testing of the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 revealed decibel losses of 25, 10, 15 and 30, respectively. These decibel losses were totaled at 90 decibels. Testing of the right ear at the same levels revealed decibel losses of 70, 45, 35 and 25, respectively. These decibel losses were totaled at 175 decibels. Dr. Gordon determined that appellant had a 0 percent monaural hearing loss of the left ear and a 28.1 percent monaural hearing loss of the right ear. He recommended a hearing aid for appellant's right ear. In response to the Office's questions, Dr. Gordon stated, *inter alia*, that appellant's hearing loss was caused by noise exposure at the employing establishment.

By letter dated November 12, 2003, the Office accepted appellant's claim for monaural hearing loss of the right ear and found that he would benefit from hearing aids and further medical benefits. The Office advised appellant that, after applying the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> edition), it was determined that he had a ratable hearing loss and was eligible for a schedule award. The Office further advised him to complete and submit a claim for a schedule award.

On November 17, 2003 appellant filed a claim for a schedule award. On November 20, 2003 he submitted a bill dated November 17, 2003 for payment of a hearing aid for the right ear in the amount of \$2,665.00.

On November 21, 2003 an Office medical adviser reviewed appellant's medical records and determined that he had zero percent binaural hearing loss. The Office medical adviser stated that appellant had no impairable hearing loss in the left ear. Regarding the right ear, the Office medical adviser found that he had a 28.1 percent monaural hearing loss. The Office medical adviser concluded that appellant did not have any impairment for binaural hearing loss since he had an ear with no loss.

By letter dated November 24, 2003, the Office advised appellant that his claim had been accepted for monaural hearing loss of the right ear only and that a hearing aid had been authorized. The Office stated that this letter corrected its previous acceptance letter issued on November 12, 2003. The Office further stated that, based on the application of the standards of

the fifth edition of the A.M.A., *Guides* to the medical evidence in the case, the hearing loss in appellant's left ear was not considered ratable and thus, a hearing aid was not authorized for the left ear.

In a November 25, 2003 letter, the Office advised appellant that this letter served as a correction of its previous letter dated November 12, 2003. The Office stated that his claim had been accepted for binaural hearing loss and that he would benefit from hearing aids and further medical benefits. The Office advised appellant that, based on the fifth edition of the A.M.A., *Guides*, he was only eligible for a schedule award for his right ear as his left ear was not considered ratable.

On November 28, 2003 the Office issued a decision granting appellant a schedule award for a 28 percent impairment of his right ear. On December 15, 2003 the Office authorized the purchase of a hearing aid for his right ear.<sup>1</sup>

### **LEGAL PRECEDENT**

The schedule award provisions 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

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<sup>1</sup> The record reveals that on December 30, 2003 the Office advised appellant that his request for the hearing aid could not be processed without authorization from an attending physician. In response, he advised the Office that authorization had already been given and he submitted a note from Dr. Gordon indicating that he had received proper medical evaluation and that he may be considered a candidate for a hearing aid in one or both ears.

<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> 20 C.F.R. § 10.404.

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

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

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

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

### ANALYSIS

Dr. Gordon, the Office referral physician and the Office medical adviser, applied the Office's standardized procedures to the August 4, 2003 audiogram performed by Ms. Christensen. Testing of the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 25, 10, 15 and 30, respectively for a total of 80 decibels. The Board notes that the August 4, 2003 audiogram actually indicated a loss of 25 decibels rather than 30 decibels at 3,000 hertz as indicated by Dr. Gordon, thus totaling 75 decibel losses and not 90 decibel losses. When divided by 4 the result is an average hearing loss of 18.75 decibels. The average loss of 18.75 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5 results in a 0 percent monaural hearing for the left ear.

Testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 70, 45, 35 and 25, respectively for a total of 175 decibels. When divided by 4 the result is an average hearing loss of 43.75 decibels. The average loss of 43.75 is reduced by 25 decibels to equal 18.75, which when multiplied by the established factor of 1.5, results in a 28.1 percent monaural hearing loss of the right ear.

The Board finds that Dr. Gordon and the Office medical adviser applied the proper standards to the August 4, 2003 audiogram. This resulted in a 28 percent monaural hearing loss of the right ear. Thus, appellant does not have more than a 28 percent monaural hearing loss of the right ear.

On appeal appellant contends that he is entitled to a hearing aid for his left ear. He referred to a conversation he had with Dr. Gordon on August 4, 2003 wherein, Dr. Gordon told him that he needed two hearing aids to help with his hearing. Appellant also referred to Ms. Christensen's August 2003 air and bone conduction test results and stated that they indicated a severe reverse slope hearing loss for the right ear and a mild to moderate high frequency hearing loss for the left ear. He stated that Ms. Christensen noted that speech reception threshold scores were 40 decibels for the right ear and 20 decibels for the left ear. In addition, she stated that speech discrimination was correct when given at the level of 40 decibels above the speech reception threshold score. Appellant stated that after he spoke to Dr. Gordon and Ms. Christensen he felt that he needed aid for both ears. He concluded by providing Ms. Christensen's explanation as to the full benefits of amplification with two aids rather than one aid.

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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).

While appellant indicated that Dr. Gordon and Ms. Christensen recommended that he wear a hearing aid for his right, as well as his left ear, there is no evidence of record establishing that he requires a hearing aid for his left ear. In his August 7, 2003 report, Dr. Gordon recommended a right hearing aid only. Ms. Christensen's August 4, 2003 audiogram does not indicate that appellant is required to wear a hearing aid for his left ear.

**CONCLUSION**

The Board finds that appellant has not established that he is entitled to more than a 28 percent impairment of the right ear for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member