

employment.¹ The employing establishment submitted a position description, noise exposure data and serial audiograms, including audiograms from 2002 and 2003. The Office referred appellant, together with a statement of accepted facts, to Dr. A. James Paine, Jr., an otolaryngologist, for evaluation.

On December 12, 2003 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing threshold levels, respectively, of 10, 5, 10 and 35 decibels on the right and 10, 5, 5 and 20 decibels on the left. Speech reception thresholds were at 10 decibels bilaterally and auditory discrimination scores were 100 percent on the right and 96 percent on the left. The audiometric test results were judged valid and representative of appellant's hearing sensitivity. Dr. Paine diagnosed noise-induced sensorineural hearing loss and concluded that the loss was due to noise exposure encountered in appellant's federal civilian employment: "The intensity and duration of the work exposure was sufficient to cause the loss in question." He recommended hearing protection at work, a hearing aid evaluation and periodic hearing evaluation.

On January 21, 2004 the Office accepted appellant's claim for binaural hearing loss and notified appellant that it would address the issue of hearing aids in separate correspondence.

On January 23, 2004 an Office medical adviser reviewed Dr. Paine's findings and determined that appellant had no ratable hearing loss.² He indicated that hearing aids were not authorized: "Hearing is excellent in speech thresholds. Not recommended by second opinion physician."

On January 27, 2004 appellant filed a claim for a schedule award.

In a decision dated February 3, 2004, the Office denied appellant's claim for a schedule award on the grounds that his hearing loss was not ratable. The Office also denied authorization for hearing aids on the grounds that the weight of the medical evidence established that appellant would not benefit from them.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body, including loss of hearing.³ Such loss or loss of use is known as permanent impairment. The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A.,

¹ In an earlier case OWCP File No. 11-0150065, the Office accepted that appellant sustained a binaural hearing loss but found that the loss was not severe enough to be considered ratable. Appellant's current claim is based on continuing exposure to hazardous noise at work.

² Although the medical adviser made no mention of the most recent serial audiograms submitted by the employing establishment, the Board notes the thresholds reported therein also showed no ratable hearing loss.

³ 5 U.S.C. § 8107(c)(13).

Guides).⁴ 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. Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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.⁵ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁶

The A.M.A., *Guides* provides that, 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.”⁷

ANALYSIS -- ISSUE 1

The Office medical adviser properly applied standardized procedures to the audiogram obtained by Dr. Paine on December 12, 2003. Hearing threshold levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second totaled 60 decibels on the right and 40 decibels on the left. Because the sum of these levels is less than 100 in each ear, appellant has no monaural or binaural hearing impairment in his ability to hear everyday sounds under everyday listening conditions.

The Office accepted that appellant’s federal civilian employment exposed him to hazardous levels of noise and that this exposure caused a high-frequency sensorineural hearing loss. Nonetheless, because this loss was not severe enough to cause a hearing impairment under the A.M.A., *Guides*, the Office properly denied a schedule award for permanent impairment. Further, because an additional amount for tinnitus is warranted only in the presence of unilateral or bilateral impairment, appellant is entitled to no schedule award based solely on his tinnitus.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act⁸ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any

⁴ 20 C.F.R. § 10.404 (1999).

⁵ A.M.A., *Guides* 250 (5th ed. 2001).

⁶ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁷ A.M.A., *Guides* 246.

⁸ 5 U.S.C. § 8103(a).

monthly compensation. The Office must therefore exercise discretion in determining whether a particular service, appliance or supply is likely to effect the purposes specified in the Act.⁹

ANALYSIS -- ISSUE 2

Appellant submitted no prescription or recommendation for hearing aids by a qualified physician. Dr. Paine recommended only an evaluation for hearing aids. The Office medical adviser observed, however, that appellant's speech thresholds were excellent and the audiogram obtained on December 12, 2003 supports this observation: speech reception thresholds were at 10 decibels bilaterally and auditory discrimination scores were 100 percent on the right and 96 percent on the left. With no practical impairment in appellant's ability to hear everyday sounds under everyday listening conditions, the evidence in this case fails to show that hearing aids would likely cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. Under these circumstances, the Office acted within its discretion under section 8103(a) to deny authorization for hearing aids.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for his employment-related hearing loss and he is entitled to no schedule award on the basis of tinnitus alone. The Board also finds that the Office properly denied authorization for hearing aids.

⁹ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member