

FACTUAL HISTORY

On December 12, 2003 appellant, then a 53-year-old plumber, filed an occupational disease claim, alleging that factors of employment caused a hearing loss. He was first aware of the condition and its relationship to his employment on September 29, 1989.¹

By letter dated January 20, 2004, the Office requested additional information.

In a letter dated January 26, 2004, appellant addressed his employment and noise exposure history with the employing establishment since 1978. He stated that he initially noted hearing loss in 1989. Appellant stated that he remained exposed to loud noise at work.

Appellant submitted audiogram test results from September 29, 1989 to December 8, 2003. In a duty status report dated December 8, 2003, Dr. Jeffrey Kunkes, a Board-certified otolaryngologist, stated that appellant's hearing test that day revealed mixed hearing loss in the 2,000 frequency range. In a CA-16 report dated December 8, 2003, Dr. Kunkes stated that appellant had a history of hearing loss initially noted in 1999, that appellant had mixed hearing loss in the 2,000 frequency range. He checked a box "yes," indicating that appellant's hearing loss was caused or aggravated by his employment.

By letter dated March 17, 2004, the Office referred appellant to Dr. Kenneth Walker, a Board-certified otolaryngologist, for a second opinion evaluation.

Dr. Walker submitted a report on April 8, 2004 detailing his examination. He stated that the audiometric testing revealed bilateral high frequency and sensorineural hearing loss and tinnitus. Dr. Walker opined that the hearing loss was caused by long-term employment-related noise exposure and, in part, to noise exposure during his federal employment and recommended a hearing aid evaluation. He also submitted results of an April 1, 2004 audiometric test performed on his behalf by a certified audiologist. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear -- 5, 5, 20 and 50 decibels; left ear -- 10, 10, 25 and 20 decibels, respectively.

On April 21, 2004 the Office accepted that appellant sustained bilateral hearing loss.

In a report dated April 23, 2004, an Office medical adviser opined that appellant had reached maximum medical improvement on April 1, 2004, the date of Dr. Walker's audiogram. He diagnosed employment-related binaural sensorineural hearing loss but opined that the extent of hearing loss was not ratable for schedule award purposes. He further advised that a hearing aid was not authorized.

By decision dated April 23, 2004, the Office found that appellant's hearing loss was not ratable for schedule award purposes.

¹ Appellant retired in September 2004.

Appellant requested an oral hearing that was held on February 17, 2005. He submitted test results from audiograms taken on May 4 and June 16, 2004.

In a decision dated April 5, 2005, an Office hearing representative affirmed the April 23, 2004 decision, finding that appellant's hearing loss was not severe enough to entitle him to a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁵ 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 speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

The Board finds that the medical evidence does not establish that appellant is entitled to a schedule award due to his accepted bilateral hearing loss because the April 1, 2004 audiological

² 5 U.S.C. § 8107.

³ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁴ 20 C.F.R. § 10.404 (1999).

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Horace L. Fuller*, 53 ECAB 775 (2002).

test performed for Dr. Walker found that his hearing loss was nonratable. While appellant submitted a number of audiograms dating from September 29, 1989 to June 16, 2004, these studies do not conform to the testing requirements found in Office procedures.¹⁰ For example, calibration information did not accompany the audiograms dated May 4 and June 16, 2004, nor did any of the audiograms indicate the date and time of appellant's most recent exposure to loud noise. Moreover, these two audiograms were not certified by a physician.¹¹ Therefore, the audiograms submitted by appellant are insufficient to establish a ratable hearing loss under the A.M.A., *Guides*.

In reviewing the April 1, 2004 audiogram performed for Dr. Walker, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps on the right revealed losses of 5, 5, 20 and 50 decibels respectively, for a total of 80 decibels. This figure, when divided by 4, results in an average hearing loss of 20 decibels. The average of 20 decibels when reduced by 25 decibels results in a 0 percent hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 25 and 20, respectively, for a total loss of 65 decibels. Sixty-five divided by 4 results in an average hearing loss of 16.25 decibels, and when reduced by the 25 decibel fence, also results in a 0 percent hearing loss of the left ear. The Board finds that the Office medical adviser properly applied the standardized procedures to the April 1, 2004 audiogram in determining that appellant's hearing loss was not ratable. The Office properly determined that appellant was not entitled to a schedule award as the extent of his hearing loss is not ratable under the standards used by the Office for rating hearing loss.

CONCLUSION

The Board finds that the Office properly denied a schedule award for appellant's hearing loss on the grounds that it is not ratable.

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.(a)(3) (September 1994); Chapter 3.600 Exhibit 4 (September 1996). See also A.M.A., *Guides*, *supra* note 5.

¹¹ An audiogram must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing. *Joshua A. Holmes*, 42 ECAB 231 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2005 be affirmed.¹²

Issued: August 11, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹² The Board notes that appellant on appeal argued that the hearing representative erred in his April 5, 2005 decision when he stated that he worked in the print shop from 1978 to 1985. The record includes an employing establishment form indicating that appellant was hired on June 21, 1979 as a laborer and that he was assigned to the print shop on January 25, 1985 as a motor vehicle operator. As the Office accepted that appellant has an employment-related hearing loss, any inaccuracy in noting his employment history is harmless error.