



Dr. Thomas A. McClure, Board-certified in occupational medicine, advised that appellant had bilateral moderate high-frequency hearing loss, substantially worse on the right.<sup>1</sup>

By letters dated March 19, 2003, the Office requested that the employing establishment furnish information regarding appellant's noise exposure, and informed appellant of the type of evidence needed to support his claim. Appellant submitted a March 21, 2003 response describing his noise exposure. The employing establishment submitted appellant's job description, noise exposure information and health records including a number of audiograms dating from 1976 to 2000.

In a letter received by the Office on May 15, 2003, the employing establishment noted that appellant had been a special agent since June 28, 1976 and provided a statement regarding appellant's firearms exposure. The employing establishment also submitted audiogram testing results, signed by Dr. McClure, dated November 18, 2002, which advised that the equipment had been calibrated and the testing performed by a certified examiner. 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 0, 0, 0 and 15 decibels; left ear 0, 0, 5 and 25 decibels, respectively. By letter dated June 5, 2003, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Adnan Hadeed, a Board-certified otolaryngologist, for a second opinion evaluation and audiometric testing. Dr. Hadeed submitted a report dated July 10, 2003 describing his examination. He diagnosed noise-induced sensorineural hearing loss and some repetitious acoustical trauma from firearms and opined that the condition was due to employment-related noise exposure. Dr. Hadeed also advised that hearing aids were an option and submitted calibration certification and results of audiometric testing performed by a certified audiologist. The audiogram, performed on July 9, 2003, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps and revealed the following: right ear 15, 10, 5 and 25 decibels; left ear 20, 10, 5 and 30 decibels, respectively.

On November 5, 2003 the Office accepted that appellant sustained an employment-related noise-induced hearing loss and acoustical trauma from firearms. In a report dated March 12, 2004, an Office medical adviser agreed that appellant's binaural hearing loss was employment related and advised that it was not ratable for schedule award purposes. In reaching this determination, he utilized the July 9, 2003 audiogram obtained for Dr. Hadeed and determined that maximum medical improvement had been reached on that date.

Appellant retired on January 30, 2004 and, on April 2, 2004, he filed a schedule award claim. In a decision dated August 8, 2005, the Office found that appellant had no compensable impairment secondary to his employment-related hearing loss as it was not ratable for schedule award purposes.

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<sup>1</sup> Only pages two and three of the report were submitted. Dr. McClure was apparently performing a required annual physical examination.

## LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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.<sup>4</sup> The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added and averaged.<sup>6</sup> The "fence" of 25 decibels is then 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.<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 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

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss. Neither the November 2002 nor July 2003 audiogram results demonstrate a ratable hearing loss.

The November 18, 2002 audiogram demonstrated frequency levels of 500, 1,000, 2,000 and 3,000 cps of 0, 0, 0 and 15 decibels on the right for a total of 15 decibels. This figure, when divided by 4, results in an average hearing loss of 3.75 decibels. The average of 3.75 decibels, when reduced by 25 decibels, results in a 0 percent monaural hearing loss in the right ear. The

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8107(c).

<sup>4</sup> *Renee M. Straubinger*, 51 ECAB 667 (2000).

<sup>5</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>6</sup> *Id.* at 250.

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

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

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

<sup>10</sup> *Horace L. Fuller*, 53 ECAB 775 (2002).

frequency levels on the left at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 0, 0, 5 and 25, for a total of 30 decibels. This figure, when divided by 4, results in an average hearing loss of 7.5 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear.

The July 9, 2003 audiogram demonstrated at 500, 1,000, 2,000 and 3,000 cps on the right of 15, 10, 5 and 25 decibels respectively, for a total of 55 decibels. As found by the Office medical adviser, this figure, when divided by 4, results in an average hearing loss of 13.75 decibels. The average of 13.75 decibels, when reduced by 25 decibels, results in a 0 percent monaural 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 20, 10, 5 and 30, respectively, for a total loss of 65 decibels; 65 decibels divided by 4 results in an average of 16.25 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss of the left ear. The Board finds that appellant's hearing loss is not ratable, and he is not entitled to a schedule award for his accepted hearing loss condition.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 8, 2005 be affirmed.

Issued: December 15, 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