

and he would probably need hearing aids.¹ Appellant and the employing establishment submitted employment records, noise exposure data and medical documents including audiograms performed by the employing establishment.

On May 25, 2004 the Office referred appellant, the case record, a statement of accepted facts and a list of specific questions to Dr. J. Douglas Green, 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. In a June 4, 2004 report, Dr. Green diagnosed sensorineural hearing loss and tinnitus 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. Dr. Green recommended noise protection and a hearing aid evaluation for appellant. An accompanying audiogram performed on June 4, 2004 and signed by Dr. Green reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps). Testing of the right ear revealed decibel losses of 5, 15, 25 and 45, respectively and testing of the left ear revealed decibel losses of 5, 10, 30 and 35, respectively.

On July 2, 2004 the Office notified appellant that his claim had been accepted for bilateral sensorineural hearing loss.² On July 6, 2004 appellant filed a claim for compensation for schedule award benefits. On July 7, 2004 an Office medical adviser reviewed Dr. Green's report and audiometric test results and concluded that appellant's bilateral sensorineural hearing loss was not severe enough to qualify for a schedule award.

By decision dated July 19, 2004, the Office denied appellant's request for a schedule award for his bilateral sensorineural hearing loss.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ sets 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.⁵ However, neither the Act nor the regulation specifies the manner in which the percentage of impairment shall be determined. For consistent results and to ensure 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

¹ The record reflects that appellant was contemplating retiring in a few months and had retired at the time of the filing of this appeal.

² Appellant apparently underwent a hearing aid evaluation on July 7, 2004 where hearing aids were recommended in both ears, the Office has not issued a decision specifically addressing a claim for hearing aids.

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(19).

awards. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁶

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged.⁸ Then, the “fence” of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁹ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss.¹⁰ 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.¹¹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.

The Office procedures also require that, “after obtaining all pertinent evidence, the claims examiner will prepare a statement of accepted facts. Unless the case file already contains a reliable medical report which fully meets the Office’s requirements, the claims examiner should refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment.”¹²

ANALYSIS

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. Green’s June 4, 2004 report. The Office medical adviser calculated the extent of hearing loss as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cps were 5,¹³ 15, 25 and 45 decibels which totaled 90 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 22.50 decibels. The average of 22.50 decibels was reduced by the “fence” of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500,

⁶ *Jerome L. Simpson*, 54 ECAB ____ (Docket No. 02-1465, issued October 4, 2002).

⁷ A.M.A., *Guides* at 250 (5th ed. 2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994).

¹³ The Board notes that the Office medical adviser incorrectly noted that the decibel loss for the right ear at 500 cps was 0 as Dr. Green’s June 4, 2004 report reflects a decibel loss of 5. This difference, however, will not change the fact that appellant does not have a ratable hearing loss in his right ear as the average hearing loss at the measured frequencies remains less than 25 decibels.

1,000, 2,000 and 3,000 cps were 5, 10, 30 and 35 decibels which totaled 80 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 20.0 decibels, which was reduced to 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

The Board finds that the report and audiogram performed on behalf of Dr. Green constitute the weight of the medical evidence of record and establishes that, as the hearing loss was found to be less than 25 decibels, appellant has no ratable loss of hearing in either ear. The Board notes that, while Dr. Green did state that appellant had tinnitus, the A.M.A., *Guides* states: “tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent for tinnitus in the presence of measurable hearing loss may be added if the tinnitus impacts the ability to perform activities of daily living.”¹⁴ However, the evidence of record does not establish measurable hearing loss or that appellant’s tinnitus impacts the ability to perform activities of daily living.¹⁵ Appellant is therefore not entitled to a schedule award for his tinnitus.

As the medical evidence submitted by appellant supporting hearing loss and tinnitus did not meet the standards contained in the A.M.A., *Guides*, appellant is not entitled to compensation for his work-related hearing loss under the Act.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing causally related to factors of his federal employment or that he is entitled to a schedule award for tinnitus.

¹⁴ A.M.A., *Guides*, *supra* note 7 at 246.

¹⁵ See *Juan A. Trevino*, 54 ECAB ___ (Docket No. 02-1602, issued January 17, 2003) (where appellant’s hearing loss was not ratable, he was not entitled to an additional award for tinnitus).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2004 is affirmed.

Issued: February 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member