

retirement was effective December 31, 1999. On March 6, 2000 the employing establishment submitted audiograms taken from 1976 to 1999 which revealed bilateral sensorineural hearing loss.

The Office accepted appellant's claim for binaural noise-induced hearing loss on March 24, 2000. On March 28, 2004 appellant filed a claim for a schedule award. Included in the record were the results of appellant's most recent audiogram taken by the employing establishment on August 31, 1999 which noted a calibration date of July 1999. In a report dated June 3, 2004, an Office medical adviser interpreted the test results as follows: decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second were 15, 15, 80 and 90 decibels. Decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second were 10, 10, 60 and 60. The Office medical adviser relied on the August 31, 1999 audiogram and determined that appellant sustained a bilateral neurosensory hearing loss of 18.75 percent with a maximum medical improvement on August 31, 1999 and authorized hearing aids.

By decision dated July 16, 2004, the Office granted appellant a schedule award for a 19 percent binaural hearing loss. The period of the award was from August 31, 1999 to May 22, 2000.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.¹ 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.² 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.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).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.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

¹ 5 U.S.C. § 8107.

² See *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

³ *Marco A. Padilla*, 53 ECAB 202 (1999).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001). See 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ *Id.*

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 Office based its July 16, 2004 schedule award on a June 3, 2004 report of Dr. Taylor, an Office medical adviser who calculated that appellant had an 18.7 percent binaural hearing loss according to the standards of the A.M.A., *Guides*. The Office medical adviser based his calculations on the findings of an August 31, 1999 audiogram obtained by the employing establishment. The Board has held that an Office medical adviser may review any audiogram submitted to the record by appellant, which in this case was an audiogram reviewed by Dr. Duane J. Taylor, a Board-certified otolaryngologist, who determined that the audiogram of August 31, 1999 appropriately represented a 19 percent binaural hearing loss.

The August 31, 1999 audiogram reviewed by the Office medical adviser on June 3, 2004 revealed that hearing thresholds in appellant's left ear at 500, 1,000, 2,000 and 3,000 cycles per second were 15, 15, 80 and 90 decibels respectively, for a total of 200 and an average of 50. Subtracting the fence of 25 decibels (the threshold of impairment) and multiplying by 1.5 gives a loss of 37.5 percent in the left ear.

Hearing thresholds in appellant's right ear at those same frequencies were 10, 10, 60 and 60 decibels respectively, for a total of 140 and an average of 35. Subtracting the fence of 25 decibels and multiplying by 1.5 gives a loss of 15 percent in the right ear.

Multiplying the lesser loss (15) by 5, then adding the greater loss (37.5), then dividing the sum by 6 yields a binaural hearing loss of 19 percent, which the Office medical adviser determined accurately represented appellant's hearing loss.

Section 8107 of the Act sets forth how many weeks of compensation are payable to an employee who sustains a permanent impairment of hearing.¹⁰ For a complete loss of hearing in one ear, an employee may receive 52 weeks of compensation. For a complete loss of hearing in both ears, he may receive 200 weeks of compensation. Partial losses are compensated proportionally.¹¹ A 19 percent binaural loss of hearing is therefore 19 percent of 200 weeks, or 38 weeks of compensation, which the Office awarded.

⁷ *Id.*

⁸ *Id.*

⁹ *Leslie M. Mahin*, 55 ECAB ____ (Docket No. 04-555, issued February 12, 2004).

¹⁰ 5 U.S.C. § 8107(c)(13).

¹¹ *Id.* at § 8107(19).

Although appellant asserts that he has a greater hearing loss, he has not submitted a properly certified audiogram indicating that he has any greater hearing loss.¹² As no other audiogram supported a greater hearing loss than the August 31, 1999 report, the Office properly found it represented appellant's work-related hearing loss.

CONCLUSION

The Board finds that the appellant failed to meet his burden of proof to establish that he sustained a hearing loss greater than 19 percent for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).