

caused by his employment on February 11, 2002. He first reported his condition to his supervisor on March 29, 2004.¹

By letter dated April 5, 2004, the Office advised appellant of the evidence he needed to establish his claim. The Office requested that he submit his employment history for each position held and the source of noise, number of hours of exposure per day and the use of safety devices for protection. Appellant submitted a history of employment and noise exposure from 1961 to April 2, 2004 as well an audiogram dated February 3, 1989 which revealed hearing loss, and additional annual audiograms from 2000 to 2004. He related noise exposure and ear protection from May 1961 to March 1970, from November 1977 to June 1979, and from November 1980 to April 2002. The employing establishment submitted relevant position descriptions and a copy of appellant's audiogram test results.

On May 6, 2004 the Office referred appellant, the record and a statement of accepted facts, to Dr. J. Douglas Green, Jr., a Board-certified otolaryngologist, for a second opinion. In a report dated May 18, 2002, Dr. Green obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps) for air conduction: on the left -- 10, 10, 20 and 55 decibels; on the right -- 10, 15, 15 and 30 decibels. Dr. Green diagnosed mild to severe noise-induced bilateral hearing loss, mid and high frequency and bilateral tinnitus caused by work-related noise exposure.

On June 23, 2004 an Office medical adviser reviewed the otologic and audiologic findings submitted by Dr. Green in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He determined that appellant had a binaural sensorineural hearing loss which was not ratable for schedule award purposes.

On June 23, 2004 the Office accepted appellant's claim for hearing loss and payment of medical benefits. In a decision dated June 28, 2004, the Office denied appellant's schedule award claim, finding that the extent of his permanent impairment was not ratable under the A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* (5th ed. 2001) has been

¹ Appellant retired on April 2, 2004.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

adopted by the implementing regulation 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*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

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.”¹¹

ANALYSIS

The Board finds that the Office medical adviser applied the proper standards to the audiometric findings in Dr. Green’s May 18, 2002 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 10, 15, 15 and 30 decibels which totaled 70 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 17.5 decibels. The average of 17.5 decibels was reduced by the “fence” of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels, 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, 1,000,

⁴ *Id.*

⁵ A.M.A., *Guides* at 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 310 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994).

2,000 and 3,000 cps were 10, 10, 20 and 55 decibels which totaled 95 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 23.75 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 for Dr. Green constitutes the weight of the medical evidence of record and establishes that as the diagnosed hearing loss is not ratable under the protocols of the A.M.A., *Guides*. The Board notes that the employing establishment’s audiogram test results are of no probative value because the record does not include the appropriate certifications as required under Office procedures.¹²

On appeal, appellant notes that he has ringing in both ears. However, the A.M.A. *Guides* only allows an impairment rating for tinnitus, up to five percent, when there is a measurable hearing loss and only if the tinnitus impacts the ability to perform activities of daily living.¹³ As noted above, appellant’s hearing loss is not ratable. Therefore, he is not entitled for a schedule award for tinnitus.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing causally related to factors of his federal employment.

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994). Office procedures require that a certification must accompany each audiological battery indicating that instrument calibration and the environment in which the tests were conducted met the accreditation standards of the Professional Services Board of ASHA (ANSI S3.6 (1969) and S3.1 (1977), respectively). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600, Exhibit 4 (September 1996). No such certification accompanied the March 8, 2002 audiology report.

¹³ See *Leslie M. Mahin*, 55 ECAB ____ (Docket No. 04-555, issued February 12, 2004); A.M.A., *Guides* at 246 (5th ed 2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2004 is affirmed.

Issued: March 25, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member