

By letter dated April 1, 2002, the Office requested that appellant submit copies of medical examinations pertaining to his hearing or ear conditions, including preemployment examinations and other audiogram test results. Appellant then submitted a May 17, 2002 claim for a schedule award. On July 23, 2002 the Office received copies of medical examinations from 1953 to 1959.

In a report dated August 6, 2002, an Office medical adviser stated that he had reviewed appellant's records and noted they reflected normal hearing as revealed by "whispered voice tests." He noted that there were no other hearing records in the imaged record prior to 1979.

By decision dated August 13, 2002, the Office denied appellant's claim on the grounds that it was untimely filed. On August 19, 2002 appellant, through counsel, requested an oral hearing. On July 23, 2003 the Office received appellant's records from 1968 to 1979 which included audiogram test results revealing hearing loss. A hearing was held on August 19, 2003 and a decision was issued on October 2, 2003 setting aside the Office's prior decision and remanding the case to the Office, finding that the claim was timely filed as appellant was not aware his hearing loss was related to his employment until 2002. The hearing representative further found that appellant's employing establishment was aware of his hearing loss while he was still employed.

The Office on October 27, 2003 thereupon referred appellant to Dr. John Keebler, a Board-certified otolaryngologist and a second opinion physician, to determine whether appellant had a work-related hearing loss and if so to calculate an appropriate schedule award.

In a report dated December 2, 2003, Dr. Keebler reviewed the results of a November 18, 2003 audiogram and opined that appellant had a bilateral mild to moderate sensorineural hearing loss and attributed the hearing loss to appellant's employment. Dr. Keebler had audiograms performed on his behalf on November 11 and 18, 2003. He opined that the November 18, 2003 audiogram was valid and representative of appellant's hearing sensitivity while the November 11, 2003 audiogram was not. Upon review of Dr. Keebler's November 18, 2003 report, an Office medical adviser determined that appellant sustained a 31 percent bilateral sensorineural hearing loss.

By decision dated December 11, 2003, the Office accepted appellant's claim for a binaural hearing loss and on December 18, 2003 granted appellant a 31 percent schedule award. The award ran from November 18, 2003 to January 24, 2005.

On January 28, 2004 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted a January 20, 2004 audiological evaluation from Tammie Sullivan Davidson, a certified audiologist, who stated that appellant had a 49.1 percent binaural hearing loss. Ms. Davidson noted that she arrived at her calculation using a formula that appears in an audiological publication.

By decision dated April 28, 2004, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. The method used in making such determination is a matter that rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred with such adoption.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ 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.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the November 18, 2003 audiogram performed for Dr. Keebler.⁹ Testing for the right ear revealed decibel losses 25, 35, 55 and 65 respectively. These decibel losses were totaled at 180 and divided by 4 to obtain the average hearing loss per cycle of 45. The average of 45 was then

¹ 5 U.S.C. § 8107.

² See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ A.M.A., *Guides* at 250.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB 310 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁹ As noted in the text, the record contains a November 11, 2003 audiogram. However, Dr. Keebler opined that it was not a representative of appellant's hearing sensitivity.

reduced by the 25 decibel fence¹⁰ to equal 20 decibels for the right ear. The 20 was multiplied by 1.5 resulting in a 30 percent loss for the right ear. Testing for the left ear revealed decibel losses 20, 50, 60 and 60 respectively. These decibel losses were totaled at 190 and divided by 4 to obtain the average hearing loss per cycle of 47.5. The average of 47.5 was then reduced by 25 decibels to equal 22.5 decibels for the left ear. The 22.5 was multiplied by 1.5 resulting in a 33.75 percent loss for the left ear. The lesser loss, 30 percent, was multiplied by 5, then added to the greater loss, 33.75 percent, the total is then divided by 6 to arrive at a 31 percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Keebler's December 2, 2003 report and accompanying November 18, 2003 audiogram performed on his behalf. The result is a 31 percent binaural hearing loss. The Board further finds that the Office medical adviser properly relied upon the November 18, 2003 audiogram as it was part of Dr. Keebler's evaluation and met all the Office's standards.¹¹

On reconsideration, appellant submitted a January 20, 2004 audiological report from Tammie Sullivan Davidson, an audiologist, who stated that appellant had a 49.1 percent binaural hearing loss.¹² However, the Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing.¹³ An audiologist is not defined as a "physician" under section 8101(2) of the Act, and an opinion of an audiologist thus cannot be considered an opinion by a qualified physician.¹⁴ Furthermore, Ms. Davidson appeared to assert that a formula obtained from an audiological publication would result in a 49 percent hearing loss. However, as noted above, the Office evaluates schedule awards in accordance with the standards contained in the A.M.A., *Guides*. The Board finds that the Office properly applied the standards contained in the A.M.A., *Guides* to the audiological findings obtained for Dr. Keebler.¹⁵

¹⁰ The decibel "fence" is subtracted as it has been shown that the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the designated hearing levels is 25 decibels or less. See A.M.A., *Guides* at 250.

¹¹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

¹² The actual audiogram does not appear in the record.

¹³ See *Joshua A. Holmes*, 42 ECAB 231 (1990).

¹⁴ 5 U.S.C. § 8101(2); *Thomas Lee Cox*, 54 ECAB ____ (Docket No. 02-284, issued May 16, 2003). The Board has also held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of loss of hearing.

¹⁵ After the Office's April 28, 2004 decision, appellant's attorney submitted additional evidence. However, as such evidence has not been considered by the Office in reaching a final decision, the Board may not review it for the first time on appeal. See 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from submitting any such evidence to the Office as part of a reconsideration request.

CONCLUSION

The Board finds that appellant has no more than a 31 percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 28, 2004 and December 11, 2003 are affirmed.

Issued: May 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member