

mechanical equipment. Appellant became aware of his condition on March 31, 2001 and realized that his hearing loss was caused or aggravated by his employment on January 23, 2004. He did not stop work.

Appellant submitted a June 29, 2004 report from Dr. Michael A. Olenginski, an otolaryngologist, who submitted a copy of a June 22, 2004 audiogram. He provided an impression of bilateral sensorineural hearing loss along with a recommendation for a hearing aid evaluation. He also diagnosed chronic allergic rhinitis. The Office also received copies of audiogram reports prepared at the employing establishment dated between 1982 and 2004, together with a May 17, 2004 sound testing report of appellant's work areas.

By letter dated July 27, 2004, the Office referred appellant, together with a statement of accepted facts to Dr. Thomas F. Kozlek, a Board-certified otolaryngologist, for a second opinion evaluation to determine whether he had an employment-related hearing loss. In a report dated August 19, 2004, Dr. Kozlek noted appellant's claims of tinnitus and hearing loss for the previous few years and the denial of any vertigo. He reviewed the history of appellant's noise exposure and ear protection. An accompanying August 19, 2004 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed decibel losses on the left of 10, 10, 10 and 20 and on the right of 10, 10, 15 and 20, respectively. Dr. Kozlek stated that the audiogram revealed bilateral slight to severe high frequency sensorineural hearing loss with excellent speech discrimination. He attributed appellant's hearing loss to noise exposure at the employing establishment. In an October 3, 2004 report, Dr. Kozlek stated that a repeat audiogram of September 28, 2004 was "unchanged from his audiogram of September 19, 2004" and indicated that the audiometer was calibrated on January 28, 2004. In an October 26, 2004 report, Dr. Kozlek indicated that a hearing aid was not recommended for appellant.

By letter dated November 5, 2004, the Office informed appellant that it had accepted his claim for a noise-induced hearing loss.

The Office then forwarded appellant's record to an Office medical adviser to determine whether there was a ratable hearing loss. In a November 5, 2004 report, the Office medical adviser noted that the record did not indicate the standard used for calibration of the audiometer used in the August 19, 2004 test. A subsequent review of the medical record by another Office medical adviser advised that the test results were in agreement and appeared reliable.

In a December 2, 2004 report, the Office medical adviser advised that the August 19, 2004 audiogram was calibrated on January 28, 2004 using the American National Standards Institute (ANSI) standard and revealed a nonratable monaural hearing loss in both ears. The Office medical adviser recommended that hearing aids not be authorized.

In a decision dated January 3, 2005, the Office denied appellant's claim for a schedule award on the grounds that his hearing loss was not ratable.

In a January 8, 2005 letter, appellant requested an oral hearing, which, in a June 2, 2005 letter, he subsequently changed to a review of the written record.

By decision dated July 18, 2005, an Office hearing representative affirmed the January 3, 2005 decision. The Office hearing representative found that appellant did not establish that he had employment-related tinnitus and that the Office properly determined that appellant was not entitled to hearing aids.

LEGAL PRECEDENT -- ISSUE 1

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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to insure 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 in 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 cps, the losses at each frequency are added up and averaged.⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁵ 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.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁷

¹ 5 U.S.C. §§ 8101-8193.

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

³ A.M.A., *Guides* 250.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS

The Office medical adviser properly applied the Office's standardized procedures to the August 19, 2004 audiogram performed for Dr. Kozlek.⁸ Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 15 and 20 respectively. These decibel losses were totaled at 55 and divided by 4 to obtain the average hearing loss per cycle of 13.75. The average of 13.75 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 0 decibels for the right ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 10 and 20 respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss per cycle of 12.50. The average of 12.50 was then reduced by the 25 decibel fence to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Office audiologist properly found that appellant did not have a ratable hearing loss under the A.M.A., *Guides*.

The Board finds that the Office medical adviser applied the proper standards to the August 19, 2004 audiogram. The result is a nonratable hearing loss bilaterally. The Board further finds that the Office properly relied upon the August 19, 2004 audiogram as it was part of Dr. Kozlek's evaluation and met all the Office's standards.⁹ Appellant has not established a ratable loss of hearing.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking compensation under the Act¹⁰ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.¹¹

Regarding tinnitus, the A.M.A., *Guides* states:

“Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to five percent for tinnitus in the

⁸ While the record contains prior audiograms taken by the employing establishment and appellant's treating physician, Dr. Olenginski, there is insufficient information accompanying the audiograms to demonstrate that they meet the Office's standards for audiograms used in the evaluation of permanent hearing impairment. See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994). See also *Joshua A. Holmes*, 42 ECAB 231 (1990) (it is the claimant's burden to submit a properly certified audiogram if he or she objects to the audiogram selected by the Office; the Office does not have to review an audiogram which has not been certified by a physician).

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994). The Board further notes that the A.M.A., *Guides* requires that hearing levels are determined according to ANSI Standards. A.M.A., *Guides* 247.

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001).

presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living.”¹²

ANALYSIS -- ISSUE 2

Although the record contains appellant’s complaints of tinnitus, there is no affirmative diagnosis of tinnitus. Neither Dr. Olenginski, appellant’s treating physician, nor Dr. Kozlek, the Office referral physician, diagnosed tinnitus. As there is no medical evidence diagnosing tinnitus, appellant has not met his burden that he had an employment-related tinnitus condition. Moreover, there is no entitlement to an impairment rating for tinnitus as appellant does not have a ratable hearing loss.¹³

LEGAL PRECEDENT -- ISSUE 3

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁴ The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.¹⁵

ANALYSIS -- ISSUE 3

Dr. Olenginski opined that appellant had a bilateral sensorineural hearing loss and recommended a hearing aid evaluation. Dr. Kozlek, an Office referral physician, opined that appellant had an employment-related bilateral sensorineural hearing loss, but did not recommend a hearing aid for appellant, noting that appellant had excellent speech discrimination. After reviewing the medical record, the Office medical adviser indicated that a hearing aid was not necessary. There is no medical evidence of record recommending that appellant be provided with hearing aids for his employment-related hearing loss. The Board finds that under these circumstances, the Office acted within its discretion under section 8103(a) to deny authorization for hearing aids. Should the need for such medical care arise in the future, appellant may file an appropriate claim.

CONCLUSION

The Board finds that as appellant has not established a ratable loss of hearing he is not entitled to a schedule award. The Board further finds that appellant has not met his burden to

¹² A.M.A., *Guides* 246.

¹³ See *Juan A. Trevino*, 54 ECAB 358 (2003).

¹⁴ 5 U.S.C. § 8103(a).

¹⁵ *Delphia Y. Jackson*, 55 ECAB ____ (Docket No. 04-165, issued March 10, 2004). (The Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

establish that he has an employment-related tinnitus condition. Additionally, the Board finds that the Office properly denied authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2006
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