

hearing loss from 1990 through 2004. Appellant's work environment constantly produced loud noises and he was only exposed to loud noises within his work environment. He was last exposed to noise at the employing establishment on March 31, 2005. Appellant submitted employing establishment audiogram results covering the period July 9, 1990 through August 13, 2004.

By letter dated August 31, 2005, the Office requested that the employing establishment provide, among other things, information regarding appellant's noise exposure and whether ear protection was provided. By letter of the same date, the Office notified appellant that the evidence submitted was insufficient to establish his claim. The Office advised him about the factual and medical evidence he needed to submit to establish his claim.

In an October 18, 2005 memorandum, Robert M. Kienle, appellant's former supervisor, stated that appellant had worked at the employing establishment for approximately 10 years in various capacities as a mechanic, wrecker operator, tire changer and welder. He also worked as a tire, recovery, service and welding shop supervisor under his supervision for approximately two years. Mr. Kienle stated that the sources of appellant's noise exposure were not limited to diesel engines, impact guns and hammering. He did not possess a noise survey report, but noted that personnel could provide this information. During his tenure, appellant worked 40 hours a week and was provided with hearing protection in the form of earmuffs and earplugs.

By letter dated December 13, 2005, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Judyann Krenning, a Board-certified otolaryngologist, for a second opinion medical examination.

In a January 30, 2006 report, Dr. Krenning stated that a significant variation from the statement of accepted facts was appellant's acknowledgement that he used firearms. She stated that the earliest audiogram, dated July 9, 1990, showed a mild loss of hearing in the left ear at 4,000 hertz (Hz) and a mild borderline moderate loss in the right ear at 4,000 to 6,000 Hz. Dr. Krenning did not know if this was the baseline audiogram. She stated that a comparison to present audiometric findings could not be performed because a sensorineural hearing loss was not documented on the "baseline" audiogram. Dr. Krenning related that the intensity and duration of workplace noise exposure could not be determined because it was not specified. She indicated that appellant had been exposed to noise away from his workplace. Dr. Krenning reported normal findings on physical examination and diagnosed bilateral sensorineural hearing loss. She opined that appellant's condition was asymmetric and recommended a magnetic resonance imaging scan to rule out an acoustic neuroma. Dr. Krenning opined that his hearing loss was due, in part, to noise exposure during his federal employment based on a hearing test with a noise notch that was greater in the right ear than the left ear. She recommended the use of ear protection around noise. Hearing aids were not recommended at that time. A December 27, 2005 audiogram performed by Dr. Larry Mazzeo, an audiologist, accompanied Dr. Krenning's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 15, 10 and 30, respectively and in the left ear decibel losses of 10, 5, 10 and 20, respectively.

On January 30, 2006 an Office medical adviser reviewed Dr. Krenning's January 30, 2006 report and audiogram results and found that appellant reached maximum medical

improvement on December 27, 2005. He determined that appellant had a nonratable hearing loss for schedule award purposes. The Office medical adviser checked the block marked no in response to whether a hearing aid was authorized, noting that it was “specifically not recommended” by Dr. Krenning.

By letter dated February 9, 2006, the Office accepted appellant’s claim for bilateral noise-induced hearing loss. By decision of the same date, the Office found that he was not entitled to a schedule award as he did not sustain a ratable hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). The Office also found that the weight of the medical evidence established that appellant would not benefit from hearing aids and, therefore, denied his claim for additional medical benefits.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² 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.³ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.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 Hz 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

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

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404; *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)* Docket No. 01-1570 (issued August 13, 2002).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

amount of the binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS -- ISSUE 1

Dr. Krenning, the second opinion specialist, examined appellant and submitted a report on January 30, 2006 finding that he sustained bilateral sensorineural hearing loss related to noise exposure in the course of his federal employment. The Office medical adviser applied the Office's standardized procedures to the December 27, 2005 audiogram obtained by Dr. Krenning. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 15, 10 and 30, respectively for a total of 70 decibels. When divided by 4, the result is an average hearing loss of 17.5 decibels. The average loss of 17.5 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels revealed decibel losses of 10, 5, 10 and 20, respectively, for a total of 45 decibels. When divided by 4, the result is an average hearing loss of 11.25 decibels. The average loss of 11.25 decibels is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser properly applied the Office's standards to the findings stated in Dr. Krenning's January 30, 2006 report and accompanying audiogram. This resulted in a nonratable hearing loss in the right and left ears, which is not compensable for schedule award purposes.

LEGAL PRECEDENT -- ISSUE 2

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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

Appellant submitted no prescription or recommendation for hearing aids by a qualified physician. Dr. Krenning recommended only the use of hearing protection around noise. The

⁹ *Id.*

¹⁰ See *Donald E. Stockstad*, *supra* note 4.

¹¹ 5 U.S.C. § 8103(a).

¹² *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

Office medical adviser checked the block marked no in response to the question whether a hearing aid was authorized, citing Dr. Krenning's recommendation. Therefore, the Board finds that the Office did not abuse its discretion under section 8103(a), by denying authorization for hearing aids. Should the need for such medical care arise in the future, appellant may file an appropriate claim at that time.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award. The Board further finds that the Office properly denied authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board