

noted. On January 10, 2004 appellant, then a retired electrician, filed an occupational disease claim alleging that he sustained a loss of hearing due to noise exposure in his federal employment. The employing establishment submitted the results of appellant's audiometric testing from August 27, 1985 until January 6, 1998. Appellant's January 6, 1998 audiograms showed frequencies of the right ear at 500, 1,000, 2,000 and 3,000 cycles per second (cps) were 25, 10, 45 and 50 decibels and frequencies in the left ear at those levels were 30, 20, 10 and 45 decibels. Appellant retired in June 1999.

By letter dated August 2, 2004, the Office referred appellant to Dr. Richard L. Bailey, a Board-certified otolaryngologist, for an examination. By letter dated August 26, 2004, the Office also referred appellant to Marilyn G. Mascgan for an audiogram which was conducted on September 10, 2004. In a report dated September 17, 2004, Dr. Bailey indicated that the September 10, 2004 audiogram revealed bilateral, symmetrical, moderate to severe sensorineural hearing loss that was consistent with acoustical damage complicated now by presbycusis. On November 2, 2004 the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On January 13, 2005 the Office referred the record to Dr. Brain E. Schindlar, a Board-certified otolaryngologist and Office medical consultant. In a report dated January 26, 2005, he stated that the January 6, 1998 audiogram was the best estimation of appellant's hearing loss at the time he retired in June 1999. Dr. Schindler found that appellant had an 11.3 percent loss in the right ear and a 1.9 percent loss in the left ear for a 3 percent binaural hearing loss.

On appeal, the Board remanded the case for the Office to obtain a supplemental report from Dr. Schindler further explaining the reasons he chose the 1998 audiogram over the 2004 audiogram.²

In a report dated May 31, 2006, Dr. Schindler stated:

“As consultant for the Department of Labor, I reviewed this file. I find that I previously reviewed this file on October 15, 2004 and January 26, 2006. When I reviewed this file I utilized the audiogram dated January 6, 1998 in order to calculate the hearing loss from [f]ederal [e]mployment though the claimant worked one more year and then retired. Noise-induced hearing loss will affect the high frequency tones and generally leave the lower frequencies spared. The hearing losses from noise exposure typically begins early in an employee's career and the loss stabilized with much slower deterioration in hearing in the latter portion of an employee's career. In the claimant we see the typical loss in the high frequency tones noted between the audiograms of January 27, 1983 and October 17, 1995 with no significant changes noted between 1995 and 1998. After 1998 one finds a loss that worsens in the lower and mid frequency tones as noted in the audiogram from March 5, 2003 and September 10, 2004. The deterioration in the hearing which is most marked at 1000 Hz [hertz] in the right

² *Id.*

ear and at 1000 Hz and 2000 Hz in the left ear has likely not been caused by any [f]ederal [n]oise exposure but is related to presbycusis and the chronic otitis externa in the left ear. I believe that the audiogram dated January 6, 1998 best represents his hearing loss from [f]ederal noise exposure.”

By decision dated June 14, 2006, the Office found that Dr. Schindler provided sufficient rationale explaining why the January 6, 1998 audiogram was used as the basis for calculating appellant’s impairment. It noted that he had already been paid a schedule award based on a three percent binaural hearing loss and was not entitled to a greater schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act³ 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 of loss of a member shall be determined. The method used in making such a determination is a matter which results 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 table so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), has been adopted by the Office for evaluating schedule losses 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 cps, the losses at each frequency are added up and averaged.⁶ The remaining amount is 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

³ 5 U.S.C. §§ 8101-8193.

⁴ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* 250.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

ANALYSIS

The Office based appellant's schedule award on a January 6, 1998 audiogram obtained shortly before his retirement. Dr. Schindler, an Office medical consultant, was requested to explain why he chose to apply the audiogram from 1998 rather than the 2004 audiogram. He noted that noise-induced hearing loss will affect high frequency tones and generally leave the lower frequencies spared. He also noted that the hearing losses from noise exposure typically begin early in an employee's career and the loss stabilized with much slower deterioration in the latter portion of the career. Dr. Schindler stated that the results of appellant's audiograms were typical of this pattern, *i.e.*, there was a typical loss in the high frequency tones revealed between the audiograms of January 27, 1983 and October 17, 1995, with no significant changes in 1995 and 1998. After 1998, the tests revealed a loss that worsened in the lower mid frequencies tones as noted in the audiograms from March 5, 2003 and September 10, 2004. Dr. Schindler noted that the deterioration at the 1,000 Hz level in the right ear and the 1,000 Hz and 2,000 Hz in the left ear was not likely caused by federal noise exposure but was related to presbycusis and chronic otitis externa in the left ear. The Board finds that Dr. Schindler provided rationale for utilizing the 1998 audiogram instead of the audiogram obtained in 2004 as best representing the hearing loss attributable to appellant's federal employment.

Dr. Schindler properly applied the Office's standardized procedures to the January 6, 1998 audiogram. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 25, 10, 45 and 50, respectively. These decibel losses were totaled at 130 and divided by 4 to obtain the average hearing loss per cycle of 32.5. The average of 32.5 was then reduced by the 25 decibel fence (the first 25 decibels are discounted as discussed above) to equal 7.5 decibels for the right ear. The 7.5 was multiplied by 1.5 resulting in an 11.3 percent loss in 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 30, 20, 10 and 45, respectively. These decibel losses were totaled at 105 and divided by 4 to obtain the average hearing loss per cycle of 26.25. The average of 26.25 was then reduced by the 25 decibel fence to equal 1.9 decibels in the left ear. Using the formula above to determine bilateral loss, the 1.9 is multiplied by 5 and added to the greater loss of 11.3, then divided by 6, for a binaural loss of 3.467 percent. The Office is required to round the calculated percentage of impairment to the nearest whole point.¹⁰ The Board finds that the Office properly determined that appellant had a three percent binaural hearing loss.

CONCLUSION

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

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2006 is affirmed.

Issued: November 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board