

In support of his claim, appellant submitted reports dated March 28 and May 20, 2005 from Dr. Gerald D. Brocato, a Board-certified otolaryngologist, who stated that appellant had a history of traumatic noise exposure. Studies revealed high-frequency hearing loss in the left ear. The record contains a report of a magnetic resonance imaging (MRI) scan of the brain dated November 5, 2003; an undated preemployment medical history and audiogram report; and an October 22, 2003 audiogram report from Susan Grigsby, an audiologist. The report indicated that appellant noticed hearing loss and tinnitus in his left ear in July 2003, following a traumatic incident at a firing range. Pure-tone audiometric testing demonstrated mild to moderate high-frequency sensorineural hearing loss in the left ear. Speech discrimination was 100 percent in both ears.

On July 28, 2005 the Office informed appellant that the information submitted was insufficient to establish his claim. The Office provided appellant 30 days to submit additional evidence, including results of audiograms, medical reports and information relating to his prior noise exposure. In response, appellant submitted a statement dated August 10, 2005. He indicated that, on July 17, 2003, a weapon misfired approximately three feet from his left ear during a training session. He immediately noticed a high-pitched ringing and diminished hearing in his left ear. Although his hearing improved somewhat by the following day, it never returned to its preinjury status.

On December 1, 2005 the Office referred appellant, together with a statement of accepted facts, to Dr. Sage Copeland, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature, extent and relationship of appellant's hearing loss to his federal employment. In a January 4, 2006 report, Dr. Copeland reviewed a baseline audiogram, which he advised revealed normal hearing at all frequencies bilaterally. He noted that existing audiograms from January 4, 2006 revealed standard threshold shift in the left ear and exceeded what would be normally predicted on the basis of presbycusis. Dr. Copeland determined that the occupational noise levels were of sufficient intensity to have caused the decrease in pure-tone sensitivities in appellant's left ear. He diagnosed moderate high-frequency sensorineural hearing loss in the left ear, which was due to appellant's noise exposure in the course of his federal employment. Dr. Copeland advised that appellant should have annual hearing evaluations and use hearing protection. He attached a copy of the January 4, 2006 audiogram and a certificate of acoustic impedance/admittance meter calibration.

On January 13, 2006 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Copeland. He applied the Office's standardized procedures to this evaluation. The Office medical adviser determined that appellant did not have a ratable hearing loss under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). Decibel losses for the left ear were totaled at 70, and divided by 4, to obtain the average hearing loss per cycle of 17.5. The 17.5 average was then reduced by the 25 decibel fence to equal 0 decibels, resulting in a 0 percent loss. The medical adviser diagnosed moderate left monaural hearing loss and recommended against the authorization of a hearing aid.

On January 17, 2006 the Office accepted appellant's claim for hearing loss to his left ear due to his employment-related hearing exposure. By decision dated January 19, 2006, the Office determined that appellant's hearing loss was not severe enough to be considered ratable and

found that appellant was not entitled to schedule award compensation for hearing loss. The Office further determined that the medical evidence established that appellant would not benefit from hearing aids and denied his claim for further medical benefits.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁵ 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.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

Regarding tinnitus, the A.M.A., *Guides* states that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.*

⁴ A.M.A., *Guides* 226-51 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See B.A.*, 58 ECAB ____ (Docket No. 06-2048, issued January 10, 2007); *see also Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

may be added for tinnitus in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform the activities of daily living.¹⁰

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish that appellant is eligible for a schedule award for hearing loss to his left ear in accordance with the fifth edition of the A.M.A., *Guides*.

On January 13, 2006 the Office medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Copeland and properly applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 25 and 25 respectively. These decibel losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss of 17.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure. The Office medical adviser properly concluded that the calculations showed that appellant did not have a ratable left ear hearing loss under the relevant standards of the A.M.A., *Guides*.

On appeal appellant notes that he has a constant ringing in his left ear. The A.M.A., *Guides* provides for the addition of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of daily living. In his January 4, 2006 second opinion report, Dr. Copeland did not diagnose tinnitus due to noise exposure. In an October 22, 2003 report, audiologist Susan Grigsby noted that, while appellant presented with tinnitus, speech discrimination was 100 percent in both ears. Although appellant contends that he suffers daily from tinnitus, it is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus.¹¹ Moreover, the A.M.A., *Guides* provides that, up to five percent may be added for tinnitus in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform the activities of daily living.¹² There is no provision for an award in the absence of a measurable hearing loss. Accordingly, the Board finds that appellant is not entitled to an additional award for tinnitus.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

¹⁰ A.M.A., *Guides* 246.

¹¹ *Id.*

¹² *Id.* at 246.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2006 is affirmed.

Issued: April 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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