

By letters dated March 9, 2005, the Office requested that appellant and the employing establishment provide a history of employment, including noise exposure and any medical reports regarding hearing problems. On April 1, 2005 appellant responded that he had worked in the manufacture and assembling of missiles and had tested rocket engines. He also submitted job descriptions and requests for personnel action which indicated that he began federal employment on May 13, 1955. By letter dated April 7, 2005, the employing establishment advised that appellant retired on November 11, 1990 and due to several reorganizations most of the information requested would not be available but that it was requesting appellant's official personnel file from the staging center in St. Louis.

On July 25, 2005 the Office referred appellant to Dr. Benjamin W. Light, a Board-certified otolaryngologist, who was provided with a statement of accepted facts and the medical record. In a report dated August 15, 2005, he described his examination and diagnosed bilateral severe high frequency sensorineural hearing loss and opined that the condition was due to employment-related noise exposure. Dr. Light recommended a hearing aid evaluation and submitted results of audiometric testing performed by a certified audiologist. The audiogram, performed on August 8, 2005 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear -- 35, 35, 35 and 55 decibels; left ear -- 30, 30, 40 and 55 decibels, respectively.

On August 16, 2005 the Office accepted that appellant sustained bilateral noise-induced hearing loss and on May 8, 2006 he filed a schedule award claim. On June 21, 2006 hearing aids were authorized. On January 22, 2005 an Office medical adviser noted his review of the record, including Dr. Light's report. He concurred with Dr. Light that appellant's hearing loss was caused by employment-related noise exposure. The Office medical adviser applied the Office's standardized procedures to the August 8, 2005 audiogram performed on Dr. Light's behalf finding that the recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels on the right of 35, 35, 35 and 55 respectively totaled a decibel loss of 160. He then divided this total by 4 which resulted in an average loss of 40 decibels. The Office medical adviser then subtracted the fence of 25 decibels to equal 15 decibels which he multiplied by the established factor of 1.5 to result in a 22.5 percent monaural hearing loss for the right ear. He then followed the same procedure on the left, noting that testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 30, 30, 40 and 55 decibels respectively, for a total of 155 decibels which, when divided by 4, resulted in an average hearing loss of 38.75 decibels. The Office medical adviser then subtracted the fence of 25 decibels, for a total of 13.75 decibels which he multiplied by the established factor of 1.5 finding a 20.63 percent monaural hearing loss for the left ear. He then multiplied the 20.63 percent monaural hearing loss for the left ear, as it was the lesser loss, by five which yielded a product of 103.15. The 103.15 was then added to the 22.5 percent hearing loss for the right ear, to obtain a total of 125.65 which was divided by 6 in order to calculate a binaural hearing loss of 20.94 which, when rounded up, equaled a 21 percent binaural hearing loss.

By decision dated July 27, 2006, the Office granted appellant a schedule award for a 21 percent binaural hearing loss for 42 weeks compensation to run from August 8, 2005 to May 28, 2006.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.² The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. 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.³ The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter 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 and averaged.⁵ The "fence" of 25 decibels is then 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

ANALYSIS

The Board finds that the record establishes that appellant has no more than a 21 percent binaural hearing loss. The Board initially notes that the audiogram dated October 19, 2004 does

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8107(c).

³ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁵ A.M.A., *Guides*, *supra* note 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Horace L. Fuller*, 53 ECAB 775 (2002).

not comport with the appropriate Office standards.¹⁰ There is no indication that it was performed by a certified audiologist, that the equipment was properly calibrated and it was not signed by Dr. Frankel.¹¹ Furthermore, testing was not done at the 3,000 level as required by the A.M.A., *Guides*.¹²

In July 2005, the Office referred appellant for a second opinion evaluation with Dr. Light. The Board notes that the medical report submitted by Dr. Light conforms to applicable criteria and thus, constitutes the weight of the medical evidence. The Office medical adviser reviewed this report and audiometric findings and properly applied the Office's standardized procedures to determine that appellant had a 21 percent binaural hearing loss impairment.¹³ The audiogram recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels on the right of 35, 35, 35 and 55 respectively totaled a decibel loss of 160. He then divided this total by 4 which resulted in an average loss of 40 decibels. The Office medical adviser then subtracted the fence of 25 decibels to equal 15 decibels which he multiplied by the established factor of 1.5 to result in a 22.5 percent monaural hearing loss for the right ear. He then followed the same procedure on the left, noting that testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 30, 40 and 55 decibels respectively, for a total of 155 decibels which, when divided by 4 resulted in an average hearing loss of 38.75 decibels. He then subtracted the fence of 25 decibels, for a total of 13.75 decibels which he multiplied by the established factor of 1.5 finding a 20.63 percent monaural hearing loss for the left ear. The Office medical adviser then multiplied the 20.63 percent monaural hearing loss for the left ear, as it was the lesser loss, by five which yielded a product of 103.15. As the procedures provide, he then added the 103.15 to the 22.5 percent hearing loss for the right ear to obtain a total of 125.65 which was divided by 6 in order to calculate a binaural hearing loss of 20.94 which, when rounded up, equaled a 21 percent binaural hearing loss. The Board finds that appellant has not established more than a 21 percent binaural hearing loss.

¹⁰ The Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. The requirements, as set forth in the Office procedure manual are, *inter alia*, that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests. *See* Federal (FECA) Procedure Manual, Part 3 – Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995); *Raymond Van Nett*, 44 ECAB 480 (1993).

¹¹ *Id.*

¹² A.M.A., *Guides*, *supra* note 4 at 250.

¹³ A.M.A., *Guides*, *supra* note 4 at 250.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has greater than the 21 percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2006 be affirmed.

Issued: April 24, 2007
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