



## **FACTUAL HISTORY**

The Office accepted that on or before August 5, 2006 appellant, then a 54-year-old special agent group supervisor and firearms instructor, sustained a bilateral sensorineural hearing loss due to hazardous noise exposure from arms fire beginning in September 1987.<sup>1</sup>

On June 5, 2006 appellant claimed a schedule award. He submitted July 21 and 23, 2004 reports from Dr. Michael R. Kilgore, a Board-certified family practitioner, who performed a fitness-for-duty examination. Dr. Kilgore diagnosed a high frequency sensorineural hearing loss on the left. In a September 20, 2005 report, Dr. James J. Sorce, an attending Board-certified otolaryngologist, related appellant's subjective symptoms of a hearing loss with tinnitus. He diagnosed a bilateral neurosensory hearing loss, worse on the left. Dr. Sorce opined that the hearing loss was caused by appellant's exposure to gunfire at work.<sup>2</sup>

On November 22, 2006 the Office referred appellant and a statement of accepted facts, to Dr. Gregory S. Rowin, an osteopathic physician specializing in otolaryngology, for a second opinion evaluation.<sup>3</sup> In a November 8, 2006 report, Dr. Rowin opined that appellant had a bilateral high frequency sensorineural hearing loss caused by hazardous noise exposure at work. He also obtained audiometric test results. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 5, 10, 20 and 30 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 20 and 30 respectively. Dr. Rowin stated that appellant's hearing loss was not ratable under the provisions of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). However, he opined that appellant was entitled to a schedule award of five percent for work-related tinnitus impacting activities of daily living. Dr. Rowin commented that appellant was not yet a candidate for hearing aids.

On November 22, 2006 the Office referred the record and a statement of accepted facts to an Office medical adviser to determine the extent of appellant's hearing loss. In a December 7, 2006 report, the Office medical adviser determined that, according to Dr. Rowin's November 8, 2006 audiometric findings, appellant had a nonratable binaural sensorineural hearing loss.

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<sup>1</sup> The Office initially denied the claim by decision dated January 27, 2006, finding that causal relationship was not established. Following appellant's March 7, 2006 request for reconsideration, the Office issued a June 1, 2006 decision vacating the January 27, 2006 decision and accepting a bilateral noise-induced hearing loss.

<sup>2</sup> Appellant also submitted annual employing establishment audiometry reports and related correspondence. Among the audiograms of record from 1985 through 2006, those performed on August 9, 2001 and July 29, 2005 demonstrated a ratable hearing loss on the left. However, the record indicates that neither audiogram was signed or reviewed by a physician. These audiograms, therefore, do not constitute probative medical evidence in this case. *Thomas L. Agee*, 56 ECAB \_\_\_\_\_ (Docket No. 05-335, issued April 19, 1985); *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>3</sup> The Board notes that Dr. Rowin, the second opinion physician and Dr. Sorce, appellant's attending physician, are associates working in the same otolaryngology practice. This does not in any way disqualify Dr. Rowin from serving as a second opinion physician in this case. It is not required in a second opinion examination that a physician not be an associate of any physician who has previously examined the claimant. *Edward Burton Lee*, 53 ECAB 183 (2001).

Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 5, 10, 20 and 30 respectively. These decibels were totaled at 65 and were divided by 4 to obtain the average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels to equal 0, resulting in a 0 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 30 and 50 respectively. These decibels were totaled at 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels to equal 0, resulting in a 0 percent loss of hearing for the left ear. The Office medical adviser concluded that appellant was not entitled to a schedule award as he had no ratable hearing loss. The medical adviser did not mention Dr. Rowin's diagnosis of tinnitus or his recommendation of a schedule award for tinnitus.

By decision dated December 20, 2006, the Office accepted that appellant sustained a hearing loss due to occupational noise exposure. The Office found that the hearing loss was not ratable under the criteria set forth in the A.M.A., *Guides*. The Office did not authorize hearing aids or additional medical benefits.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees Compensation Act<sup>4</sup> 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 ensure 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 A.M.A., *Guides* (5<sup>th</sup> ed. 2001), has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps the losses at each frequency are added up and averaged. A "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>6</sup> A.M.A., *Guides* at 250.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

loss.<sup>9</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>10</sup>

Regarding tinnitus, the A.M.A., *Guides* states: “[t]innitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add 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.”<sup>11</sup>

### ANALYSIS

The Office accepted that appellant sustained a binaural high frequency sensorineural hearing loss due to hazardous noise exposure at work. To determine appellant's entitlement to a schedule award, the Office obtained a second opinion report and audiometric test results from Dr. Rowin, an osteopathic physician specializing in otolaryngology, who found a nonratable bilateral high frequency sensorineural hearing loss. The Board finds that Dr. Rowin used the appropriate portions of the A.M.A., *Guides* and accurately calculated a zero percent monaural hearing loss on the left and a zero percent monaural hearing loss on the right.

Dr. Rowin also opined that appellant had a five percent hearing impairment due to tinnitus impacting activities of daily life. The A.M.A., *Guides*, provides for up to a five percent rating for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform activities of daily living.<sup>12</sup> However, the Board has held that a claimant is not entitled to a schedule award for tinnitus if the measurable hearing loss is not ratable under the standards set forth in the A.M.A., *Guides*.<sup>13</sup> Appellant's hearing loss is not ratable under the A.M.A., *Guides*. Thus, he is not entitled to a schedule award for tinnitus. The Office's December 22, 2006 decision finding that appellant was not entitled to a schedule award is, therefore, appropriate under the law and facts of this case.

### CONCLUSION

The Board finds that appellant has not established that he sustained a ratable hearing loss in the performance of duty.

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<sup>9</sup> *Id.*

<sup>10</sup> *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>11</sup> A.M.A., *Guides* at 246.

<sup>12</sup> *Id.*; *Juan A. Trevino*, 54 ECAB 356 (2003).

<sup>13</sup> *Juan A. Trevino*, *supra* note 12 at 358.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 22, 2006 is affirmed.

Issued: August 1, 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