

2005, the Office denied modification of the previous decisions. In an August 4, 2006 decision,¹ the Board set aside the October 6, 2005 Office decision. The Board found that there was a conflict in the medical evidence between Dr. Stephen E. Guilder, an attending Board-certified otolaryngologist, and Dr. Lawrence Grobman, a Board-certified otolaryngologist, regarding whether appellant sustained hearing loss due to exposure to hazardous noise at work. The Board remanded the case to the Office for referral to an independent medical examiner to resolve the conflict in medical evidence regarding the cause of appellant's hearing loss. The complete facts of this case are set forth in the Board's August 4, 2006 decision and are herein incorporated by reference.

The Office referred appellant to Dr. Robert B. Contrucci, a Board-certified otolaryngologist, for an impartial medical examination. In a report dated September 11, 2006, Dr. Contrucci found that appellant had sustained a bilateral sensorineural hearing loss caused by employment factors. Although he had him undergo an audiogram on September 6, 2006 Dr. Contrucci did not certify this audiogram as accurate or provide complete readings from this audiogram.

In a memorandum dated October 23, 2006, an Office medical adviser, relying on the September 9, 2005 audiogram results and calculations from Dr. Grobman's referral report, determined that appellant had a five percent permanent, binaural hearing loss.

On January 17, 2006 the Office granted appellant a schedule award for a five percent binaural hearing loss for the period September 9 to November 17, 2005 for a total of 10 weeks of compensation.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employee's Compensation Act² and the implementing federal regulation³ set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.⁴ However, neither the Act nor the regulation specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁵ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁶

¹ Docket No. 06-1032 (issued August 4, 2006).

² 5 U.S.C. § 8107 *et seq.*

³ 20 C.F.R. § 10.304.

⁴ *See Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Id.*

⁶ *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and 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.⁷ Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. 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 binaural hearing loss.⁸

The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ANALYSIS

The Board finds that the case is not in posture for decision.

In its August 4, 2006 decision, the Board remanded the case to the Office for referral to a referee medical examiner to determine whether appellant’s binaural hearing loss was causally related to hazardous noise. The Office referred appellant to Dr. Contrucci who determined in his September 11, 2006 report that appellant sustained a bilateral sensorineural hearing loss caused by employment factors. However, he did not certify the accuracy of the audiogram he had appellant undergo on September 6, 2006.⁹ Further, the readings and results from this audiogram did not provide a sufficient basis for a hearing loss award, although it suggested that appellant might have more than a five percent binaural hearing loss. The Office medical adviser did not rely on the September 2006 audiogram; instead, he relied on the September 9, 2005 audiogram provided by the Office referral physician, Dr. Grobman, in arriving at his determination of a five percent binaural hearing loss. As the Board had determined there was a conflict in the medical evidence between Dr. Grobman and Dr. Guilder regarding whether appellant had sustained a binaural hearing loss causally related to employment factors and had instructed the Office to resolve the conflict through referral to an impartial specialist, the Office should have, therefore, relied on a new, complete and accurate audiogram certified by the impartial specialist, Dr. Contrucci, in determining the percentage of appellant’s binaural hearing loss. Accordingly, the Office’s January 17, 2006 decision must be set aside.

On remand, the Office must refer appellant for an audiological evaluation, the results of which must be certified by Dr. Contrucci or another referee specialist as being accurate to determine the percentage of hearing loss. After such development as it deems necessary, the Office shall issue a *de novo* decision.

⁷ A.M.A., *Guides*, page 250 (5th ed. 2001).

⁸ *Id.* See also *Daniel C. Goings*, *supra* note 4.

⁹ See *Vincent Holmes* 53 ECAB 468 (2002).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2007 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 8, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board