

federal employment. He submitted a narrative statement addressing his exposure to noise in his federal employment. Audiograms conducted from October 23, 1987 through May 8, 1996 were also submitted.

In a December 5, 2005 letter, the Office requested additional factual information from appellant. Appellant responded in a December 21, 2005 letter.

In a March 21, 2006 letter, the Office informed appellant that he had been scheduled for a second opinion evaluation. A statement of accepted facts was included with the Office's letter. Appellant was referred to Dr. Charles Foulsham, Board-certified in otolaryngology. In an April 21, 2006 report, Dr. Foulsham described the results of his audiologic examination. The audiogram performed on April 21, 2006 determined that the frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz (Hz) for the right ear revealed decibel (dB) losses of 25, 20, 15 and 35 respectively and for the left ear revealed dB losses of 20, 15, 20 and 50.

In a May 17, 2006 letter, Dr. Kathy Landao Goodman stated that she reviewed the results and found 1.875 percent monaural loss in the left ear.

In a May 16, 2006 note, the district medical adviser, Arnold T. Berman, Board-certified in orthopedic surgery, found that appellant had 0 percent monaural hearing loss in the right ear and 1.875 percent monaural hearing loss in the left ear.

In a May 19, 2006 decision, the Office accepted appellant's hearing loss claim and granted a schedule award for a two percent monaural loss in the left ear.

On June 23, 2006 appellant requested reconsideration. In a June 5, 2006 letter, Dr. Foulsham opined that appellant had a 10 dB loss or approximately 8 percent reduction in hearing. In a November 16, 2006 memorandum, Dr. Berman noted that, as a new audiogram was not performed, there would not be a change to the previous finding of a two percent monaural hearing loss.

By December 22, 2006 decision, the Office denied modification of the May 19, 2006 decision. It determined that appellant's hearing loss for the right ear was not severe enough to be considered ratable. Regarding the left ear, the Office noted no change in the previously recommended award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform

¹ The Act provides that for complete or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13) (2000).

standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁴ Then, the “fence” of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷

ANALYSIS

In reviewing appellant’s April 21, 2006 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz for the right ear reveal dB losses of 25, 20, 15 and 35, respectively, for a total of 95 dBs. This figure, when divided by 4 results in an average hearing loss of 23.75 dBs. The average loss of 23.75 is reduced by 25 dBs to 0, which represents a 0 percent ratable monaural hearing loss for the right ear. Therefore, the Office properly found that appellant’s hearing loss for his right ear was nonratable.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dB losses of 20, 15, 20, 50 dBs respectively, for a total of 105 dBs. This figure when divided by 4 results in an average hearing loss of 26.25 dBs. The average loss of 26.25 is reduced by 25 dBs to 1.25, which represents a 1.875 percent ratable monaural hearing loss for the left ear. This loss was rounded up to two percent, the amount of the schedule award granted for impairment to appellant’s left ear. The weight of the medical opinion evidence establishes that appellant has no more than a two percent monaural loss of hearing of his left ear. In making this decision, the Office medical adviser properly applied the Office’s procedures to the audiograms obtained by Dr. Foulsham. The additional evidence from Dr. Foulsham is not probative as he did not apply the formula set out in the A.M.A., *Guides* in his calculations to rate the percentage of impairment to appellant’s hearing loss.

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁴ A.M.A., *Guides* at 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

CONCLUSION

The Board finds that appellant has no more than a two percent nonmonaural loss of hearing loss of hearing to his left ear.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 22 and May 19, 2006 be affirmed.

Issued: June 25, 2007
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