

further stated that, at night, after he went home, he could still hear the saw motors humming in his ears. Appellant noted that Tennessee Valley Authority did not furnish ear protection until approximately five years before he retired in 1988. He submitted copies of audiogram test conducted between 1961 and 1985.

On March 28, 2008 the Office referred appellant to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for a second opinion to determine the cause and extent of his claimed hearing loss. In his May 1, 2008 report, Dr. Goldberg noted appellant's exposure to loud noise during the course of his federal employment. An audiogram reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and showed the following decibel losses: 25, 15, 10 and 20 in the right ear and 25, 15, 5 and 20 in the left ear. Dr. Goldberg concluded that the examination showed normal hearing and that there was no hearing impairment due to noise exposure during federal employment.

On May 9, 2008 the district medical adviser reviewed Dr. Goldberg's May 1, 2008 report and concluded that appellant had a bilateral sensorineural hearing loss, but that it was not ratable for purposes of a schedule award.

By letter dated May 12, 2008, the Office accepted appellant's claim for bilateral sensorineural hearing loss but found that based upon the April 29, 2008 audiogram and the medical opinion of a licensed otolaryngologist, appellant's hearing loss was not severe enough to be considered ratable. As such, appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.

LEGAL PRECEDENT

Section 8107 of the 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 standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) 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 cps, the losses at each frequency are added up and averaged.⁴ Then, the fence of 25 decibels is deducted because, as the A.M.A.,

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

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* 250 (5th ed. 2001).

Guides point out, losses below 25 decibels 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

An Office medical adviser applied the Office's standardized procedures to the April 29, 2008 audiogram obtained by Dr. Goldberg. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed hearing losses in the right ear of 25, 15, 10 and 20 respectively. These totaled 70 decibels which, when divided by 4, obtained an average hearing loss of 17.50 decibels. The average of 17.50 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 totals a 0 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 25, 15, 5 and 20 respectively. These totaled 65, which when divided by 4, obtains an average hearing loss of 16.25 decibels. The average of 16.25 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels, which, when multiplied by the established factor of 1.5 totals a 0 percent hearing loss in the left ear.

While the evidence of record establishes that appellant has mild sensorineural hearing loss causally related to his federal employment, Dr. Goldberg's opinion clearly states that review of these audiograms showed that the hearing threshold levels were still within the confines of normal hearing. Therefore, the Office properly denied the claim for compensation based upon the medical evidence in the record.

CONCLUSION

The weight of the medical evidence does not establish ratable hearing loss causally related to noise exposure in federal employment.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2008 is affirmed.

Issued: December 12, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board