

employment as a pipe fitter for the employing establishment.¹ On the same date, he filed a claim for a schedule award.

In a February 8, 2007 medical report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, diagnosed appellant with bilateral sensorineural hearing loss. He noted that appellant had a high-tone loss in the left ear entirely compatible with hearing loss due to past noise exposure and a hearing loss in the mid frequencies in both ears which may have been caused by past industrial noise exposure. Dr. Randolph noted that, when he applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment's* formula for determining percent of hearing loss, appellant had a ratable hearing loss of zero percent in both ears. However, he did note that appellant had tinnitus which interfered with his ability to understand communication and that he would accordingly recommend a two percent rating for tinnitus. Finally, Dr. Randolph noted that appellant was a candidate for hearing aids. He based his conclusion on an audiogram conducted on February 6, 2007 finding that testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following loss: right ear 5, 20, 30 and 30 decibels respectively and left ear 10, 10, 20 and 20 decibels, respectively. Appellant also submitted the results of routine audiograms conducted during his employment.

In an April 26, 2007 memorandum, an audiologist for the employing establishment stated that appellant had a nonratable sensorineural hearing loss consistent with noise and aging, although left retrocochlear pathology had not been ruled out. He opined that appellant was not yet a good hearing aid candidate due to the relative normalcy of his hearing within the primary speech range and recommended controversion of his claim. Captain Bruce Christen, an occupational medicine physician for the employing establishment, concurred with this recommendation.

By letter dated May 7, 2007, the Office requested that Dr. Randolph review the statement of accepted facts and prior audiograms and indicate whether appellant's industrial noise exposure from his federal employment caused or aggravated his hearing loss. In a May 29, 2007 addendum, Dr. Randolph noted that appellant's hearing was normal in both ears at the time of his earliest industrial audiogram on January 15, 1974; that appellant had significant industrial noise exposure during his employment for the employing establishment from 1971 until the present time; and that, between the 1974 audiogram and the February 6, 2007 audiogram, appellant's hearing had degenerated in both ears. He noted that the hearing loss, particularly in the left ear, had an audiometric configuration compatible with hearing loss aggravated by noise exposure. Therefore, Dr. Randolph concluded that, "on a more probable than not basis, [appellant's] hearing loss was caused by industrial noise exposure from federal employment."

In a memorandum to the Office medical adviser dated June 6, 2007, the Office indicated that it accepted that appellant's hearing loss was caused by factors of his federal employment and that he continued to be exposed to noise at the work site. The Office asked that the Office medical adviser provide the date of maximum medical improvement and the permanent partial impairment. In a report dated June 15, 2007, the Office medical adviser listed appellant's date of

¹ The evidence established that appellant worked for the employing establishment since 1971 and was exposed to noise from air cutoff tools, air end prepping tools, sawsalls, bay flex grinders, brandsaws, hand grinders, deck growlers, chipping air guns and vibrating tools from 8 to 12 hours a day. Hearing protection was worn.

maximum medical improvement as the date of the most recent valid audiogram, *i.e.*, February 6, 2007. The Office medical adviser determined that, based on the results of the February 6, 2007 audiogram, appellant had a binaural hearing loss of zero percent and was not ratable for schedule award purposes.

By letter dated June 19, 2007, the Office accepted appellant's claim for bilateral hearing loss due to noise.

As a result of a referral by Dr. Randolph, appellant was seen by an audiologist who concluded in a report dated June 20, 2007 that appellant should be fit with hearing aids. The Office authorized hearing aids by letter dated June 21, 2007.

By decision dated July 13, 2007, the Office determined that appellant had not established that the extent of his hearing loss was severe enough to be ratable for schedule award purposes.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² specifies the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body.³ 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.⁴ The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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 divided by six to

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8107(c).

⁴ *Renee M. Straubinger*, 51 ECAB 667 (2000).

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

⁶ A.M.A., *Guides* at 250.

⁷ *Id.*

⁸ *Id.*

arrive at the amount of the binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss because the February 6, 2007 audiogram results of Dr. Randolph did not demonstrate ratable values. This audiogram demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cps of 5, 20, 30 and 30 decibels in the left ear for a total of 85 decibels. This figure, when divided by 4, results in an average hearing loss of 21.25 decibels. The average of 21.25 decibels, when reduced by 25 decibels, results in a 0 percent monaural hearing loss to the left ear. The frequency levels on the right at 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 10, 20 and 20, for a total of 60 decibels. This figure, when divided by 4, results in an average hearing loss of 15 decibels, which when reduced by the 25 decibel fence, also results in a 0 percent monaural hearing loss in the right ear. The Board finds that, as the February 6, 2007 audiogram did not demonstrate that appellant's hearing loss was ratable, he was not entitled to a schedule award for his accepted hearing loss condition.¹¹

Finally, the Board notes that while the A.M.A., *Guides* provides that tinnitus, in the presence of a unilateral or bilateral hearing impairment, may impair speech discrimination and 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.¹² However, as appellant's hearing loss is not ratable, he would not be entitled to the additional award for tinnitus.¹³

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

⁹ *Id.*

¹⁰ *Horace L. Fuller*, 53 ECAB 775 (2002).

¹¹ The Board, however, has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he or she may apply for a schedule award for any ratable impairment. See *Robert E. Cullison*, 55 ECAB 570 (2004).

¹² A.M.A., *Guides* at 246.

¹³ See *Juan A. Trevino*, 54 ECAB 358 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2007 is affirmed.

Issued: January 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board