

and based on his hearing loss. The case was remanded to the Office for further development. The facts and history contained in the prior appeals are incorporated by reference.

On November 27, 2007 the Office referred appellant to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. On December 11, 2007 Dr. Goldberg described appellant's history of injury and treatment, and opined that he had very mild high frequency sensorineural hearing loss (SNHL) subsequent to his federal employment. He opined that appellant had SNHL consistent with presbycusis as opposed to noise-induced trauma and recommended amplification if his hearing worsened. Dr. Goldberg performed an otologic evaluation of appellant and audiometric testing was conducted on that date by Aaron Johnson. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 15, 20, 30 and 35 decibels; left ear 15, 20, 25 and 25 decibels. Dr. Goldberg determined that at the beginning of his federal employment appellant's hearing was normal. He determined that appellant sustained mild SNHL from high frequency which increased after 1987.

On December 19, 2007 an Office medical adviser reviewed Dr. Goldberg's report and audiometric tests. He concluded that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*), appellant had no permanent impairment due to his accepted hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for schedule award purposes after applying the Office's standards for evaluating hearing loss to the results of the December 11, 2007 audiogram. He also checked the box "no" in response to whether hearing aids were authorized.

In a decision dated December 20, 2007, the Office accepted that appellant's hearing loss was employment related but not severe enough to be ratable for purposes of a schedule award. It also determined that the medical evidence did not establish that he would benefit from hearing aids.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

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 cycles per second (cps), the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is 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 remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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 loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

The Board finds that the medical evidence is insufficient to establish that appellant is entitled to a schedule award for his hearing loss under the fifth edition of the A.M.A., *Guides*. The Board's November 6, 2007 decision remanded the case to determine whether appellant had any permanent impairment of his hearing. The Office referred appellant to Dr. Goldberg for examination and testing which was conducted on December 11, 2007.

On December 19, 2007 the Office medical adviser reviewed the audiological testing performed for Dr. Goldberg and properly applied the Office's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 30 and 35 respectively. The Board notes that these decibel losses total 100 decibels and are divided by 4 to obtain the average hearing loss of 25 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 0. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 25 and 25 respectively. These decibel losses total 85 decibels and when divided by 4 result in an average hearing loss of 21.25 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a negative figure. The Office medical adviser properly concluded that the calculations showed that appellant did not sustain a ratable hearing loss under the A.M.A., *Guides* and that there was no need for hearing aids.¹⁰

⁵ A.M.A., *Guides* 226-51 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ The Board notes that, on appeal, appellant resubmitted a January 8, 2007 audiogram taken by Dr. Long which did not provide test results at all frequencies required by Office's standards for rating hearing loss. Evidence from Dr. Long was not previously of record. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

The Board finds that appellant's employment-related hearing loss is not ratable. Thus, he is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant did not establish that he sustained a ratable hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2007 is affirmed.

Issued: July 16, 2008
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