

protection until recent years. Appellant did not stop work. In support of his claim, he submitted an audiometric summary record noting his hearing levels as of August 10, 2007.

In an October 26, 2007 statement, appellant described his federal civilian employment history and noise exposure. He stated that he first joined the employing establishment in June 1970. Appellant continued to perform essentially the same duties as a customs and border protection officer until 1977, when he left federal employment and entered the private sector. He returned to the employing establishment in 1992. Appellant explained that he was required to undergo quarterly firearm qualifications with both a pistol and a shotgun. Qualifications lasted at least three hours and involved heavy exposure to noise from gunfire. Appellant also stated that, between his quarterly firearm qualifications, he was exposed to traffic noise from both cars and cargo trucks passing through the port of entry, where he was stationed. He explained that he underwent an examination pursuant to the employing establishment's health and safety program, which he failed due to his hearing loss from exposure to gunfire without proper hearing protection over the years.

On December 10, 2007 the Office referred appellant along with a statement of accepted facts to Dr. Mark Wegleitner, a Board-certified otolaryngologist, for a second opinion examination to determine the cause and extent of appellant's hearing loss.

By correspondence dated December 27, 2007, appellant requested a copy of the second opinion report after the examination was completed.

Dr. Wegleitner conducted a second opinion examination and prepared a report on January 8, 2008. He noted appellant's history of noise exposure in his federal civilian employment beginning in 1970 and opined that his high frequency hearing loss was not consistent with age-related hearing loss. Dr. Wegleitner stated that appellant's noise exposure in federal civilian employment was sufficiently severe to have caused his hearing loss and also noted that his hearing was normal prior to his beginning work for the employing establishment. He diagnosed moderate sensorineural hearing loss due to noise exposure during employment. An audiogram conducted that day on Dr. Wegleitner's behalf reflected testing at the 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and recorded the following decibel losses: 30, 25, 15 and 20 in the right ear and 20, 25, 25 and 30 in the left ear. Dr. Wegleitner found that appellant's hearing loss was not ratable pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition¹ (A.M.A., *Guides*).

In a January 23, 2008 report, an Office medical adviser reviewed the record and concurred with Dr. Wegleitner's diagnosis and assessment of appellant's impairment. Applying the standards set forth in the A.M.A., *Guides*, he concluded that appellant had zero percent monaural hearing impairment in the right ear, zero percent monaural hearing impairment in the left ear and zero percent binaural hearing impairment. The medical adviser also noted Dr. Wegleitner's finding that appellant did not presently require hearing aids but may need them in the future.

¹ A.M.A., *Guides* (5th ed.).

In a February 4, 2008 decision, the Office advised appellant that it had accepted his claim for hearing loss due to work-related exposure to noise. However, it also advised that the extent of his hearing loss was not ratable for schedule award purposes. Accordingly, the Office found that appellant was not entitled to a schedule award.

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 schedule 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

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 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.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 is divided by six to 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 Office medical adviser applied the Office's standard procedures, detailed above, to the January 8, 2008 audiogram performed on Dr. Wegleitner's behalf. The audiogram tested

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2002).

⁴ *Id.*

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

decibel losses at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 30, 25, 15 and 20 respectively for the right ear. The total decibel loss in the right ear is 90 decibels. When divided by 4, the result is an average hearing loss of 22.5 decibels. The average loss of 22.5 decibels is reduced by the “fence” of 25 decibels to equal -2.5 decibels, which when multiplied by the established factor of 1.5, results in 0 percent monaural hearing loss for the right ear.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 20, 25, 25 and 30 decibels respectively, for a total decibel loss of 100 decibels. When divided by 4, the result is an average hearing loss of 25 decibels. The average loss of 25 decibels is reduced by the “fence” of 25 decibels, to equal 0 decibels, which when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Wegleitner’s January 8, 2008 report and audiogram. The result is zero percent binaural hearing loss, which is not ratable. Therefore, appellant’s hearing loss is not compensable for schedule award purposes.¹¹

The Board notes that the record also contains a copy of an August 10, 2007 audiometric summary record. However, the audiogram upon which this summary was based is not of record nor is there any indication that a physician reviewed and concurred with the listed findings nor is there any indication as to the circumstances under which the testing was carried out. Office procedures set forth requirements for the type of medical evidence used in evaluating hearing loss, including the requirements for audiological testing and equipment.¹² The Board has held that it is appellant’s burden to submit a properly certified audiogram for review if he objects to the audiogram selected by the Office for the determination of the degree of his hearing loss.¹³ As there is no properly certified audiogram with the August 10, 2007 audiometric record, it is insufficient to determine whether appellant’s hearing loss is ratable.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he was entitled to a schedule award for ratable binaural hearing loss.

¹¹ The Board notes that appellant asserts on appeal that he has not received a copy of Dr. Wegleitner’s January 8, 2008 report and audiogram. This decision does not preclude appellant from obtaining a copy of the report from the Office. As noted in the text of this decision, the audiometric testing results obtained on behalf of Dr. Wegleitner showed that appellant’s hearing loss was not ratable pursuant to the A.M.A., *Guides*.

¹² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995).

¹³ *James A. England*, 47 ECAB 115 (1995) (an audiogram prepared by an audiologist must be certified by a physician as being accurate before it can be used to determine the percentage loss of hearing).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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