

his federal employment. He stated that he first realized he had a hearing loss on August 8, 2007 and related it to his federal employment.

Appellant submitted audiograms dated April 25, 2006 through February 19, 2008. On an April 25, 2006 audiogram, a Dr. Roger Brown noted that appellant sustained bilateral high frequency hearing loss.

By letter dated June 10, 2008, the Office notified appellant of the deficiencies in his claim and requested that he provide additional information.

Appellant submitted audiograms dated August 16, 1996 through February 7, 2005. From August 27, 1996 through September 15, 2003, he was diagnosed with high frequency hearing loss at 4,000 cycles per second in the right ear and 6,000 cycles per second in the left ear.

On September 29, 2008 the Office referred appellant together with a statement of accepted facts to Dr. Thomas Crews, a Board-certified otolaryngologist. Audiometric testing on September 29, 2008 revealed decibel losses of 30, 10, 10 and 45 in the right ear and 10, 10, 20 and 30 in the left ear at 500, 1,000, 2,000 and 3,000 cycles per second, respectively. Dr. Crews indicated that appellant's workplace exposure, as described in the statement of accepted facts, was sufficient to have caused his hearing loss. He diagnosed noise-induced high frequency binaural hearing loss and low frequency mild nerve loss in the right ear. Dr. Crews indicated that the hearing loss was due to appellant's federal employment and stated that he demonstrated significant high frequency loss in both ears due to noise exposure and he was not exposed to significant outside activities to explain the hearing loss. He recommended a yearly hearing test, hearing conservation and a trial of amplification for both ears.

On October 15, 2008 the Office referred Dr. Crews' report to Dr. A.E. Anderson, Jr., an Office medical adviser. On October 16, 2007 Dr. Anderson found that appellant sustained a zero percent binaural hearing loss. He averaged the losses indicated in the September 29, 2008 audiogram of Dr. Crews and divided by 4, resulting in a 23.75 decibel loss in the right ear and a 17.5 decibel loss in the left ear. Subtracting the 25 decibel fence and multiplying the remaining loss by 1.5, Dr. Anderson determined that appellant sustained zero percent loss in the right and left ears. He provided a maximum medical improvement date September 29, 2008 and recommended that a hearing aid not be authorized.

By decision dated October 22, 2008, the Office accepted the claim for bilateral noise-induced hearing loss. It further found that appellant was not entitled to a schedule award because his hearing loss was not severe enough to be ratable. The Office also found that the weight of medical evidence established that appellant would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent loss or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a

¹ 5 U.S.C. §§ 8101-8193.

member shall be determined. The method used in making such determination is a matter which results in the sound discretion of the Office. For consistent results and to insure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.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 The average is then reduced by the 25 decibel fence. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁵ 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.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁷

ANALYSIS -- ISSUE 2

The issue is whether appellant has a ratable employment-related hearing loss thereby entitling him to a schedule award. In order to determine the extent and degree of any employment-related hearing impairment, the Office referred him to Dr. Crews for a second opinion evaluation of his hearing loss. On September 29, 2008 an audiogram was performed. Dr. Crews diagnosed noise-induced high frequency binaural hearing loss, which he opined that was related to appellant's federal employment. He recommended a trial of binaural amplification. The Office properly referred Dr. Crews' report and the September 29, 2008 audiogram to Dr. Anderson, an Office medical adviser, for review in keeping with its procedures.⁸

In an October 16, 2008 Form CA-51, Dr. Anderson found that appellant did not sustain a ratable hearing loss. He applied the Office's formula to average appellant's hearing loss at 500, 1,000, 2,000 and 3,000 cycles per second and divided by four. Dr. Anderson then subtracted the 25 decibel fence and multiplied by 1.5. In the right ear, he added 30, 10, 10 and 45 to equal 95 and divided by 4, resulting in an average hearing loss of 23.75 decibels. Dr. Anderson then subtracted the 25 decibel fence and multiplied by 1.5, to determine zero percent loss in the right ear. Similarly, for the left ear, he added 10, 10, 20 and 30 to equal 70 and divided by 4, resulting

² See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ A.M.A., *Guides* 250.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Specific Conditions*, Chapter 3.600.8(a)(6).

in an average hearing loss of 17.5 decibels. After subtracting the 25 decibel fence and multiplying by 1.5, Dr. Anderson found a zero percent hearing loss in the left ear. He concluded that appellant had no ratable hearing loss and indicated that a hearing aid was not authorized. The Board finds that Dr. Anderson properly applied the Office's protocols to the September 29, 2008 audiogram. As appellant did not sustain a ratable hearing loss in either ear, the Board finds that he is not entitled to a schedule award.⁹

Appellant contends on appeal that the standard used by the Office in determining hearing acuity does not take into account his high frequency hearing loss. In determining whether hearing loss is ratable for the purposes of a schedule award, the Office uses the standard provided by the A.M.A., *Guides*, which is in accordance with the 1996 American National Standards Institute (ANSI) audiometric standards.¹⁰ This standard is based on the principle that if the average of the hearing levels at 500, 1,000, 2,000 and 3,000 cycles per second is 25 decibels or less, there is no change in the ability to hear everyday sounds under everyday listening conditions.¹¹ In *Harry P. Butler*,¹² the Board addressed the Office's adoption of the A.M.A., *Guides* as a uniform standard to be applied to all claimants. The Office properly applied its protocols to appellant's claim.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁴ The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision on whether appellant is entitled to hearing aids.

⁹ See *S.L.*, 57 ECAB 726 (2006).

¹⁰ See A.M.A., *Guides* 250; *Bernard A. Babcock, Jr.*, *supra* note 2.

¹¹ See *id.*

¹² 43 ECAB 859 (1992).

¹³ *Reynaldo R. Lichtenberger*, *supra* note 7.

¹⁴ 5 U.S.C. § 8103(a).

¹⁵ See *Marjorie S. Greer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

The Board has held that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits may still be payable if any causally related hearing loss exists, such as a hearing aid.¹⁶ Dr. Crews' report indicated that appellant's hearing loss was due to his federal employment and recommended binaural amplification. Dr. Anderson, the Office medical adviser, noted that hearing aids should not be authorized. However, he did not provide any explanation for his disagreement with Dr. Crew. The Office's decision denying hearing aids provided no findings for why hearing aids were not authorized. The record is unclear regarding the reason why it declined to authorize hearing aids.

The Board notes that proceedings under the Act are not adversarial in nature. The Office shares in the responsibility to develop the evidence and has an obligation to see that justice is done.¹⁷ Accordingly, the case will be remanded to the Office for further development on the question of whether appellant is entitled to hearing aids. Following this and such other development is deemed necessary, it shall issue an appropriate merit decision regarding appellant's entitlement to hearing aids.¹⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he had a ratable hearing loss entitling him to a schedule award. The Board also finds that the case is not in posture for decision regarding whether the Office should authorize hearing aids.

¹⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990); *Raymond VanNett*, 44 ECAB 480 (1993).

¹⁷ See *Lyle E. Dayberry*, 49 ECAB 369 (1998). See also *Raymond VanNett, id.* (where the Office began to develop appellant's hearing loss claim but did not complete such development, the case was remanded for further evidentiary development).

¹⁸ See *J.B.*, 60 ECAB ____ (Docket 08-1735, issued January 27, 2009) (where the Office denied a claim for a schedule award and hearing aids finding that appellant's hearing loss was not severe enough to be ratable. The Board affirmed the denial of the schedule award but remanded the case for further development as to whether hearing aids should be authorized on the grounds that the second opinion recommended binaural amplifications; however, the Office's medical adviser disagreed without explanation and the hearing aids were denied by the Office).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside and remanded in part.

Issued: August 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board