

The Office referred appellant, together with a statement of accepted facts, to Dr. Gerald Randolph, a Board-certified otolaryngologist, for an evaluation. By report dated September 3, 2008, Dr. Randolph found decibel losses of 10, 10, 5 and 25 in the right ear and 20, 10, 5 and 25 in the left ear. He noted that appellant's hearing had degenerated in excess of that which would normally have been predicted on the basis of presbycusis alone. However, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* formula for determining hearing loss, he has a zero percent ratable loss and that no additional rating was required for tinnitus. Dr. Randolph found that appellant's workplace noise exposure was of sufficient intensity and duration to have caused his hearing loss.

By decision dated October 16, 2008, the Office accepted appellant's hearing loss claim. It denied his schedule award claim because his hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation 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 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., *Guides* points 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

¹ The Act provides that, for complete or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' 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).

⁵ *Id.*

⁶ *Id.*

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

Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, the A.M.A., *Guides* allow up to five percent additional for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.⁸

ANALYSIS

Appellant claimed a schedule award for his accepted hearing loss. His burden is to establish, through the production of probative medical evidence, that his hearing loss is ratable as defined by the A.M.A., *Guides*. The Board finds that appellant has not met his burden and the Office properly denied a schedule award claim.

Appellant submitted an employing establishment audiograms conducted between June 18, 1973 and September 18, 2007. These audiograms are of limited probative value as they were not accompanied by the appropriate certifications required under Office procedures.⁹ Moreover, they were not signed or reviewed by a physician.¹⁰ The Office is not required to review every uncertified audiogram which has not been prepared in connection with an examination by a medical specialist.¹¹

The Office referred appellant to Dr. Randolph for an evaluation. Dr. Randolph applied the Office's standardized procedures to the September 3, 2008 audiogram. 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 10, 10, 5 and 25 respectively. These totaled 50 decibels which, when divided by 4, produced an average hearing loss of 12.5 decibels. The average of 12.5 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 and which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in the right ear. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the left ear of 20, 10, 5 and 25 respectively. These totaled 60 decibels which when divided by 4, produced an average hearing loss of 15 decibels. The average hearing loss of 15 decibels, when reduced by 25 decibels (the first 25 decibels are

⁷ *Id.*

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994). Office procedures require that a certification must accompany each audiological battery indicating that instrument calibration and the environment in which the tests were conducted met the accreditation standards of the Professional Services Board of ASHA (ANSI § 3.6 (1969) and § 3.1 (1977), respectively). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600, Exhibit 4 (September 1996). No such certification accompanied these audiology reports.

¹⁰ *Thomas L. Agee*, 56 ECAB 465 (1985); *Merton J. Sills*, 39 ECAB 572 (1988). See also *Herman L. Henson*, 40 ECAB 341 (1988) (an audiologist is not considered a physician under the Act).

¹¹ *Robert E. Cullison*, 55 ECAB 570 (2004).

discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in the left ear.

Dr. Randolph calculated appellant's binaural hearing loss. The zero percent hearing loss for the right ear, when multiplied by five, yielded a product of zero. The zero percent loss was then added to the zero percent hearing loss for the left ear to obtain a total of zero. The zero percent loss was then divided by six, in order to calculate a binaural hearing loss of zero percent. Dr. Randolph opined that no additional rating was required for tinnitus.

Appellant contests on appeal that his ears ring 24/7 with his new hearing aids. The evidence of record does not contain probative medical evidence establishing a ratable hearing loss, such that tinnitus would be compensable. The A.M.A., *Guides* state that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent can be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹² As appellant has no ratable hearing loss, an award is not payable for tinnitus. The Office properly denied appellant's schedule award claim.

CONCLUSION

Appellant has not established that he sustained a ratable hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 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

¹² *David W. Ferrall*, 56 ECAB 362 (2005).