

of his federal employment. The employing establishment noted that he retired on November 2, 2007. During the period 2002 until his retirement, appellant's exposure to noise showed a lack of duration and intensity sufficient to have caused additional loss. The Office assigned the claim File No. xxxxxx540.

By letter dated May 2, 2008, the Office asked appellant to submit further information. In response, appellant submitted results of hearing tests conducted at the employing establishment from February 16, 2005 to November 2, 2007.

By letter dated August 11, 2008, the Office referred appellant to Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist, for a second opinion. On September 4, 2008 Dr. Pappas noted that appellant complained of worsening hearing and continuous ringing (tinnitus). He diagnosed sensorineural hearing loss due to appellant's employment. However, Dr. Pappas noted that there was no appreciable change in hearing in either ear when the audiogram of September 4, 2008 was compared to a hearing test obtained on February 13, 2001. Air testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 20, 20, 50 and 55 respectively. Air testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 50 and 55, respectively. Applying the A.M.A., *Guides* to the September 4, 2008 audiogram testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps for the right ear, when added together and divided by 4, equals an average hearing loss of 36.25 decibels. Subtracting the 25 decibel fence and multiplying the 11.25 remainder by 1.5 equals a hearing loss of 16.875 percent. With regard to the left ear, testing at frequency levels of 500, 1,000, 2,000 and 3,000 cps yielded an average hearing loss of 38.75. Subtracting the 25 decibel fence and multiplying the 13.75 remainder by 1.5 yields a 20.625 percent hearing loss in appellant's right ear. To determine binaural hearing loss, the 16.875 loss in the right ear is multiplied by 5 which yields a product of 84.375 which is then added to the hearing loss in the left ear of 20.625 to equal 105 which is divided by 6 in order to equal a 17.5 percent binaural hearing loss. Dr. Pappas thus calculated appellant's hearing loss as 16.9 percent on the right and 20.7 percent on the left, or a 17.5 percent binaural hearing loss.

By decision dated September 30, 2008, the Office denied appellant's claim for an additional hearing loss.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate

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).

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 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

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸ Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible.⁹ When the Office refers appellant for a second opinion examination and the physician's report does not adequately address the issues at hand, the Office has a responsibility to secure a report on the relevant issues.¹⁰

ANALYSIS

In the instant case, appellant received a schedule award for 15 percent binaural hearing loss. He claimed an increased impairment and the Office referred him to Dr. Pappas for evaluation of whether his employment caused or contributed to additional hearing loss. Dr. Pappas opined that there was no appreciable change in hearing in either ear when he compared the February 2001 study to the study obtained on September 4, 2008. However, he also noted that appellant had a hearing impairment of 16.9 percent in his right ear, 20.7 percent in his left ear, for a binaural hearing impairment of 17.5 percent. Although Dr. Pappas stated that there was no appreciable change in hearing in either ear, he obtained audiological tests results indicating a greater hearing loss than the 15 percent previously awarded. He also advised

² 20 C.F.R. § 10.404.

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.*

⁷ *Id.*

⁸ *John J. Carlone*, 41 ECAB 354, 359-60 (1989).

⁹ *Edward Schoening*, 41 ECAB 277, 282 (1989).

¹⁰ *Peter C. Belkind*, 56 ECAB 581 (2005). *See also Robert Kirby*, 51 ECAB 474, 476 (2000).

that appellant complained of tinnitus. However, Dr. Pappas never addressed whether tinnitus was a factor to be considered in rating appellant's permanent impairment.¹¹

As the Office undertook development of the medical evidence by referring appellant to Dr. Pappas for a second opinion examination, it had an obligation to secure, if necessary, clarification of the physician's opinion.¹² Accordingly, the case will be remanded for the Office to further develop the medical evidence with regard to the extent of permanent impairment due to appellant's accepted hearing loss.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2008 is vacated and the case is remanded for further development of the medical evidence.

Issued: November 10, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ The A.M.A., *Guides* allows for compensation of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living. See A.M.A., *Guides* 246; S.G., 58 ECAB ___ (Docket No. 07-30, issued February 26, 2007); *Leslie M. Mahin*, 55 ECAB 311 (2004).

¹² *Id.*