

On September 23, 2008 the Office requested additional evidence. Appellant submitted several audiograms and hearing conservation data dated April 5, 1972 to June 12, 2008. He also submitted several statements noting his history of employment and the noise exposure associated with each job. In an October 2, 2008 statement, appellant noted that he had previously submitted information on the sources and extent of his workplace noise exposure as well as audiograms. He used foam earplugs with ear defenders for protection. Appellant noted that on June 12, 2008 he was sent to a hearing referral because he failed three hearing tests in the previous month. He also noted constant ringing in his ears in addition to his hearing loss. Appellant indicated that throughout his federal career he was a flight line mechanic.

On October 16, 2008 the Office referred appellant with a statement of accepted facts to Dr. David Kiener, a Board-certified otolaryngologist, for a second opinion evaluation. In a November 18, 2008 report, Dr. Kiener reviewed appellant's history of employment and the noise exposure at each position. He noted that appellant retired in September 2008. Dr. Kiener reviewed appellant's audiometric testing results and found normal speech reception of 10 decibels in the right ear and 5 decibels in the left ear. He found normal word discrimination in each ear as well as normal acoustic reflexes. Dr. Kiener noted that appellant had been exposed to considerable noise as a flight line mechanic from 1972 to 2008 whereby he developed tinnitus and symptoms of hearing loss where people must repeat themselves. He opined that appellant had mild to moderate neurosensory hearing loss, worst at 4,000 cycles per second and improved below and above that frequency. Dr. Kiener advised that this condition was regarded as an acoustic notch, which was consistent with the history of noise exposure. He indicated that with normal speech reception appellant heard well in most circumstances but could have some trouble understanding speech in the presence of background noise. Dr. Kiener opined that most people with this type of hearing loss did not require hearing aids. A November 10, 2008 audiogram performed on his behalf showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second: 5, 5, 10 and 25 for the right ear and 5, 5, 10 and 35 for the left ear.

In a November 26, 2008 decision, the Office accepted appellant's claim for bilateral neurosensory hearing loss. On December 2, 2008 appellant filed a schedule award claim.¹ He resubmitted several audiograms and documents already of record.

On January 2, 2009 an Office medical adviser reviewed Dr. Kiener's November 18, 2008 report and the audiometric testing. He noted that November 10, 2008, the date of the audiogram performed for Dr. Kiener, was the date of maximum improvement. The Office medical adviser applied the Office's standards for evaluating hearing loss to the audiogram and determined that appellant had zero percent monaural hearing loss in the right ear and zero percent monaural hearing loss in the left ear. He noted that hearing aids were not indicated.

In a January 22, 2009 decision, the Office denied appellant's schedule award claim finding that his hearing loss was not severe enough to be considered ratable and that the weight of the medical evidence established that he would not benefit from hearing aids.

¹ Appellant had previously filed a schedule award claim on September 11, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure 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* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. 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. 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. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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. The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁴

ANALYSIS

Appellant submitted a schedule award claim for hearing loss and the Office developed the claim by referring him to Dr. Kiener. On November 18, 2008 Dr. Kiener examined him and obtained audiometric testing. He opined that the noise exposure at appellant's workplace caused mild to moderate bilateral neurosensory hearing loss. Dr. Kiener advised that appellant did not require hearing aids.

An Office medical adviser applied the Office's standard procedures to the November 10, 2008 audiogram. The Office tested decibel losses at 500, 1,000, 2,000 and 3,000 cycles per seconds and recorded decibel losses of 5, 5, 10 and 25 respectively in the right ear. The total decibel loss in the right ear is 45 decibels. When divided by 4, the result is an average hearing loss of 11.25 decibels. The average loss of 11.25 is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 5, 5, 10 and 35 respectively for a total decibel

² 5 U.S.C. §§ 8101-8193.

³ *R.D.*, 59 ECAB ____ (Docket No. 07-379, issued October 2, 2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ *E.S.*, 59 ECAB ____ (Docket No. 07-1587, issued December 10, 2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

loss of 55 decibels. When divided by 4, the result is an average hearing loss of 13.75 decibels. The average loss of 13.75 decibels is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the left ear. The medical adviser also found that hearing aids were not authorized. The Board finds that he properly applied the standards to the findings of the November 10, 2008 audiogram and concluded that appellant did not have a ratable hearing loss for schedule award purposes.

The Board notes that appellant submitted audiograms dated between April 5, 1972 and June 12, 2008. However, the audiograms of May 7 and June 12, 2008 were not reviewed or certified by a physician. Therefore, these tests cannot be the basis of an impairment determination.⁵ Consequently, the Board finds that the weight of the medical evidence establishes that appellant has no ratable loss of hearing pursuant to the A.M.A., *Guides*.

On appeal, appellant asserts that he is entitled to a schedule award as his hearing loss was accepted as a work-related injury. As noted, however, the Office determined the percentage of hearing impairment for schedule award purposes under the standards of the A.M.A., *Guides*. It properly found that appellant's hearing loss, while clearly work related, is not sufficient to be ratable. Appellant also asserts that he is entitled to a schedule award as he has constant ringing in his ears. While Dr. Kiener found that he had tinnitus, he also found normal word discrimination. It is for the evaluating physician to integrate any subjective complaints with objective data to estimate the degree of permanent impairment due to tinnitus. In the absence of a ratable hearing loss, a schedule award for tinnitus is not appropriate.⁶ Appellant further asserts that he is unable to listen to conversations when in crowds. However, the Board has also held that factors such as limitations on daily activities do not go into the calculation of a schedule award.⁷

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he had a ratable hearing loss entitling him to a schedule award.

⁵ See *Joshua A. Holmes*, 42 ECAB 231 (1990) (while the Office should evaluate audiograms from a physician that are made within about two years of each other and are submitted by more than one specialist, the Office does not have to review an audiogram which has not been certified by a physician). See also *Robert E. Cullison*, 55 ECAB 570 (2004). In any event, these uncertified audiograms do not indicate a ratable hearing loss.

⁶ *L.S.*, 57 ECAB 725 (2006); see *Juan A. Trevino*, 54 ECAB 358 (2003).

⁷ *E.L.*, 59 ECAB ____ (Docket No. 07-2421, issued March 10, 2008).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 22, 2009 is affirmed.

Issued: November 6, 2009
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