



the employing establishment in 1994.<sup>1</sup> In 2001, he began wearing the ear piece in his right ear because of significant hearing loss in his left ear. Appellant was last exposed to industrial hearing loss on June 8, 2004. The Office accepted that he was exposed to occupational noise levels above 85 decibels while working at the employing establishment. It accepted his claim for binaural hearing loss.

In a June 7, 2004 report, Michael Webb, a clinical audiologist, stated that hearing test results indicated that appellant had severe sensorineural high frequency hearing loss in the left ear and mild loss in the right ear. Audiometric testing performed on May 24, 2004 revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second: left ear decibel losses of 80, 75, 70 and 65; right ear decibel losses of 15, 10, 20 and 30.

In a November 10, 2004 report, Dr. Eugene P. Falk, a Board-certified otolaryngologist and an Office referral physician, noted that appellant was an air traffic controller with noise exposure at work. In February 2001, he awoke with markedly decreased left hearing. Dr. Falk opined that appellant had employment-related hearing loss in his left ear but the sudden increase in hearing loss in 2001 was not due to noise trauma. He provided findings on examination and stated that audiometric testing revealed marked left sensorineural hearing loss above 75 decibels and normal right ear hearing at speech frequencies with a slight drop at greater than 4,000 cycles per second (cps) which was indicative of previous noise trauma. Audiometric testing performed on November 10, 2004 revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cps: left ear decibel losses of 75, 75, 70 and 65; right ear decibel losses of 20, 10, 20 and 30.

In a December 31, 2004 report, Dr. Brian E. Schindler, a Board-certified otolaryngologist and an Office medical adviser, agreed with Dr. Falk that appellant's hearing loss was causally related, in part, to noise exposure. He apparently used the audiometric test results obtained on May 24, 2004 and applied the Office's standardized procedures. Dr. Schindler totaled the decibel losses of 80, 75, 70 and 65 in the left ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 290 decibels and divided by 4 to obtain the average hearing loss of 72.5 decibels. This average was then reduced by 25 decibels to equal 47.5 decibels and multiplied by the established factor of 1.5 to compute 71.25 percent impairment in the left ear, rounded to 71 percent.<sup>2</sup> Dr. Schindler totaled the losses of 15, 10, 20 and 30 in the right ear at 75 decibels and divided by 4 to obtain the average hearing loss of 18.75 decibels. This average was then reduced by 25 decibels to equal zero which was multiplied by the established factor of 1.5 to compute zero percent monaural hearing loss in the right ear.<sup>3</sup>

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<sup>1</sup> From 1970 to 1981 appellant worked as an air traffic controller for the Federal Aviation Administration. From 1981 to 1994 he worked in private industry.

<sup>2</sup> The audiometric test results provided by Dr. Falk for the left ear, 75, 75, 70 and 65, total 69.38 percent (285 total decibels divided by 4 equals 71.25, reduced by 25 decibels equals 46.25 and multiplied by 1.5 equals 69.375).

<sup>3</sup> See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (October 2005) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

By decision dated February 1, 2005, the Office granted appellant a schedule award for 71 percent monaural hearing loss in his left ear for 36.92 weeks from November 10, 2004 to July 26, 2005.<sup>4</sup>

Appellant requested reconsideration and indicated that he disagreed with the percentage of impairment awarded to him.<sup>5</sup> He also submitted copies of audiometric test results dated July 1, 1994 to October 21, 2003.

By decision dated October 21, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant further merit review.

In a June 16, 2008 statement, appellant asserted that, because his hearing loss in both ears was work related, he was entitled to a schedule award for his right ear hearing loss. He submitted a June 4, 2008 report in which Mr. Webb described the nature of appellant's hearing loss. Audiometric testing performed on May 13, 2008 revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second: left ear decibel losses of 75, 75, 70 and 60; right ear decibel losses of 15, 10, 25 and 30. Appellant also submitted audiometric test results previously of record.

By decision dated July 2, 2008, the Office denied appellant's claim for a schedule award for hearing loss in his right ear on the grounds that the medical evidence established that his hearing loss was not severe enough to be ratable.

Appellant requested a telephonic hearing with an Office hearing representative that was held on November 3, 2008. The hearing representative explained the standardized methods by which the Office determined hearing loss.

By decision dated January 12, 2009, the hearing representative affirmed the July 2, 2008 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>6</sup> provides for compensation to employees sustaining permanent impairment due to loss of use of scheduled members. 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 in which rests within the sound discretion of the Office. For consistent results and to ensure equal justice under the law to all claimants, 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*

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<sup>4</sup> The Federal Employees' Compensation Act provides for 52 weeks of compensation for complete loss of hearing in one ear. 5 U.S.C. § 8107(c)(13)(A). Multiplying 52 weeks by 71 percent equals 36.92 weeks of compensation.

<sup>5</sup> In his request for reconsideration, appellant indicated that he was appealing a December 31, 2004 decision. However, December 31, 2004 is the date of the Office medical adviser's report.

<sup>6</sup> 5 U.S.C. § 8107.

*Permanent Impairment* (A.M.A., *Guides*) has been adopted by the Office for evaluating schedule losses and the Board has concurred in the adoption of this standard.<sup>7</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>8</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added and averaged.<sup>9</sup> 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.<sup>10</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

On November 10, 2004 Dr. Falk provided findings on examination and stated that audiometric testing revealed marked left sensorineural hearing loss above 75 decibels and normal right ear hearing at speech frequencies with a slight drop at greater than 4,000 cps which was indicative of previous noise trauma. Audiometric testing performed on November 10, 2004 revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cps: left ear decibel losses of 75, 75, 70 and 65; right ear decibel losses of 20, 10, 20 and 30.<sup>13</sup>

In a December 31, 2004 report, Dr. Schindler applied the Office’s standardized procedures for determining hearing loss to audiometric test results obtained on May 24, 2004. He totaled the decibel losses of 80, 75, 70 and 65 in the left ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cps at 290 decibels and divided by 4 to obtain the average hearing loss of 72.5 decibels. This average was then reduced by 25 decibels to equal 47.5 decibels and multiplied by the established factor of 1.5 to compute 71.25 percent impairment in the left ear, rounded to 71 percent. Dr. Shindler totaled the losses of 15, 10, 20 and 30 in the right ear at 75 decibels and divided by 4 to obtain the average hearing loss of 18.75 decibels. This average was then reduced by 25 decibels to equal zero which was multiplied by the established factor of 1.5 to compute zero percent monaural hearing loss in the right ear.

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<sup>7</sup> See 20 C.F.R. § 10.404; *Thomas O. Bouis*, 57 ECAB 602 (2006).

<sup>8</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> As noted, the audiometric test results provided by Dr. Falk for the left ear, 75, 75, 70 and 65, total 69.38 percent (285 total decibels divided by 4 equals 71.25, reduced by 25 decibels equals 46.25 and multiplied by 1.5 equals 69.375).

The Board notes that the May 13, 2008 audiometric testing provided by appellant results in a lower percentage of impairment for the left ear and the percentage of hearing loss for the right ear remains zero. The testing revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second: left ear decibel losses of 75, 75, 70 and 60; right ear decibel losses of 15, 10, 25 and 30. Totaling the decibel losses in the left ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second equals 280 decibels, dividing by 4 equals an average hearing loss of 70 decibels. This average, reduced by 25 decibels, equals 45 decibels, multiplied by the established factor of 1.5, equals 67.5 percent impairment in the left ear. Applying the procedures to the right ear decibel losses of 15, 10, 25 and 30 equals zero percent impairment (80 divided by 4 equals 20, minus 25 equals 0, multiplied by 1.5 equals 0). Additionally, the audiometric results do not indicate the last calibration date for the testing equipment. Therefore, the results are of diminished probative value.

Appellant argued that the Office should consider the impact of his left ear hearing loss on his overall hearing. The A.M.A., *Guides* provides that for calculating binaural hearing loss the loss in each ear is calculated using the formula for monaural hearing loss. The lesser loss is then multiplied by five and added to the greater loss. The total is divided by six to calculate the binaural loss.<sup>14</sup> In appellant's case, 0 percent monaural hearing loss in the right ear added to 71 percent in the left ear and dividing by 6 equals 12 percent binaural impairment (11.83 rounded to 12). Multiplying 52 weeks for complete loss of hearing by 12 percent equals 12 weeks. This is less than the 36.92 weeks appellant received in the February 1, 2005 schedule award for his left ear hearing loss.

The Board finds that the Office properly calculated appellant's right and left ear impairment due to hearing loss and determined that he had no ratable hearing loss in his right ear.

### CONCLUSION

The Board finds that the evidence establishes that appellant has no ratable hearing loss in his right ear.

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<sup>14</sup> *Supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 12, 2009 is affirmed.

Issued: October 9, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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