

FACTUAL HISTORY

On February 6, 2008 appellant, a 59-year-old retired aircraft mechanic, filed an occupational disease claim (Form CA-2) for hearing loss and ringing in his ears.¹ He attributed his hearing loss to exposure to aircraft engine noise. Appellant first became aware of his hearing loss and its relation to his employment on October 28, 2003.

Appellant submitted noise survey data reports and audiograms conducted between 1991 and 2007. He also submitted a January 22, 2008 note providing details concerning his employment history, employment exposure to sources of noise, hobbies and information concerning his prior hearing problems.

The Office referred appellant, together with a statement of accepted facts, to Dr. Lester F. Shapiro, a Board-certified otolaryngologist, for a second opinion evaluation.

By report dated May 8, 2008, Dr. Shapiro reported findings on examination, a review of appellant's employment and medical history. He diagnosed appellant with bilateral sensorineural hearing loss. Dr. Shapiro opined that appellant's hearing loss was greater than that produced by presbycusis and was caused by noise exposure related to appellant's federal employment. He recommended appellant be provided with hearing protection when in the presence of excessive noise and hearing aids.

An audiogram conducted on May 6, 2008 reflected testing at 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and showed the following decibel losses: 10, 5, 15 and 35 in the right ear and 5, 5, 10 and 50 in the left ear.

The Office referred Dr. Shapiro's report to the district medical adviser to calculate an impairment rating. By report dated May 16, 2008, the district medical adviser reported that, based on the calculations specified by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*) the May 6, 2008 audiogram revealed appellant had a zero percent binaural hearing loss and therefore his hearing loss was not ratable. He reported that hearing aids should not be authorized.

By decision dated July 10, 2008, the Office accepted appellant's claim for noise-induced binaural sensorineural hearing loss.

On July 31, 2008 appellant filed a schedule award claim (Form CA-7).

By decision dated August 4, 2008, the Office denied appellant's schedule award claim because the evidence of record was insufficient to establish that he sustained a ratable permanent impairment to a scheduled member.

Appellant disagreed and on August 19, 2008 requested review of the written record.

¹ The record reflects appellant retired on December 31, 2007.

By decision dated November 18, 2008, the hearing representative affirmed the Office's August 4, 2008 decision. The hearing representative, however, modified the Office's August 4, 2008 decision to allow authorization for hearing aids.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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 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 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 A.M.A., *Guides* 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*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁵ 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.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, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The issue is whether appellant has a ratable employment-related hearing loss entitling him to a schedule award. In order to determine the extent and degree of appellant's alleged employment-related hearing impairment, the Office referred him to Dr. Shapiro for an evaluation of his hearing loss. On May 6, 2008 an audiogram was performed. Dr. Shapiro diagnosed bilateral sensorineural hearing loss which he opined was related to appellant's federal employment. He recommended that appellant be provided hearing protection when in the presence of excessive noise and hearing aids. In keeping with its procedures, the Office properly

² 5 U.S.C. §§ 8101-8193.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

referred Dr. Shapiro's report and the May 6, 2008 audiogram to the district medical adviser for review.⁹

The district medical adviser found appellant's hearing loss was not ratable. He applied the Office's formula to average appellant's hearing loss at 500, 1,000, 2,000 and 3,000 cps and divided it by four. The district medical adviser then subtracted the 25 decibel fence and multiplied it by 1.5. In the right ear, he added 10, 5, 15 and 35 to equal 65 and divided it by 4, resulting in an average hearing loss of 16.25 decibels. The district medical adviser then subtracted the 25 decibel fence and multiplied it by 1.5 to determine 0 percent loss in the right ear. For the left ear, adding 5, 5, 10 and 50 produced a sum of 70, which, divided by 4, resulted in an average hearing loss of 17.5 decibels. After subtracting the 25 decibel fence and multiplying it by 1.5, the district medical adviser found a 0 percent hearing loss in the left ear. He concluded that appellant's hearing loss was not ratable. The Board finds that the district medical adviser properly applied the Office's protocols to the May 6, 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.

On appeal, appellant argues that he should be compensated for his noise-induced hearing loss. Whether a hearing loss is ratable is a medical issue which can only be proved by a preponderance of the probative rationalized medical opinion evidence. The only probative rationalized medical opinion evidence in the present case consisted of Dr. Shapiro's May 8, 2008 report and the May 16, 2008 report from the district medical adviser. While appellant submitted copies of audiograms conducted between 1991 and 2007, these are of no probative value as they were not certified by a physician as accurate.¹⁰ Because there was no other probative medical evidence of record, appellant has not met his burden of proof in establishing he sustained a ratable hearing loss entitling him to a schedule award.

CONCLUSION

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

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(6) (September 1995).

¹⁰ See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990). See also *James A. England*, 47 ECAB 115 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; the Office need not review uncertified audiograms).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board