

condition on December 15, 2007 and that it was caused by his federal employment on January 15, 2008.

Appellant submitted a July 15, 2008 report in which Dr. Mark P. Andrezzi, an otolaryngologist, presented findings on examination and diagnosed asymmetrical sensorineural hearing loss with tinnitus of the right ear and “shortness of breath with humidity.”

Appellant also submitted results from a July 15, 2008 audiogram.

The Office referred appellant, together with a statement of accepted facts for evaluation by Dr. William O’Connor, a Board-certified otolaryngologist. On May 8, 2009 Dr. O’Connor reviewed appellant’s medical history, presented findings on examination and diagnosed employment-related sensorineural hearing loss with right-ear “subjective tinnitus.” An audiogram conducted May 8, 2009 reflected testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed hearing losses in the right ear of 5, 5, 5 and 5 respectively and 10, 5, 5, and 5 on the left.

The district medical adviser, by report dated July 3, 2009, reviewed Dr. O’Connor’s May 8, 2009 audiogram and opined that appellant sustained no ratable hearing loss.

By decision dated July 30, 2009, the Office accepted appellant’s claim for bilateral sensorineural hearing loss. Finding that appellant’s hearing loss was not ratable, the Office also found appellant was not entitled to a schedule award for his 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.² 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* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.³ Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).⁴

Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.⁵ Then, the fence of 25 decibels is deducted because, as the A.M.A.,

² 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).

³ 20 C.F.R. § 10.404 (2006).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003). FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ A.M.A., *Guides* 250 (6th ed. 2008).

Guides points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸

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 impairment for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.⁹

ANALYSIS

On appeal appellant argues that computation of his hearing loss should have reflected the impact of tinnitus on his hearing impairment. The Board has carefully reviewed the evidence of record¹⁰ and finds no evidence of record establishing ratable hearing loss or that directly addresses the impact of tinnitus on appellant's daily activities.¹¹

The Office medical adviser applied the Office's standardized procedures to the May 8, 2009 audiogram obtained by Dr. O'Connor. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 5, 5, 5 and 5. These totaled 20 decibels which, when divided by 4, produced an average hearing loss of 5 decibels. The average of 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 appellant's 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 10, 5, 5 and 5. These totaled 25 which when divided by 4, produced an average hearing loss of 6.25 decibels. The average hearing loss of 6.25 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in appellant's left ear.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Appellant submitted a November 4, 2008 decision of an administrative law judge in a Department of Veterans Affairs decision denying his right-ear hearing loss claim and granting his tinnitus claim for 10 percent impairment. While this decision was favorable to appellant it is not binding on the Board. *See generally Jimmy L. Day*, 48 ECAB 654 (1997).

¹¹ *See Juan A. Trevino*, 54 ECAB 356, 358 (2003).

The district medical adviser then proceeded to calculate appellant's binaural hearing loss. The zero percent hearing loss on the left, when multiplied by five, yielded a product of zero percent. The zero percent loss was then added to the zero percent loss in appellant's right ear to obtain a total of zero percent which, when divided by six yields a zero percent binaural hearing impairment. Thus the evidence of record establishes appellant's hearing loss is not ratable.

Although appellant submitted results from audiometric testing performed on July 15, 2008, this audiogram is insufficient to satisfy appellant's burden of proof as it does not comply with the requirements set forth by the Office. It lacks speech testing and bone conduction scores and was not prepared or certified as accurate by "physician" as defined by the Act.¹² It is appellant's burden to submit a properly certified audiogram to the Office.¹³ The Office is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy appellant's burden of proof.

Furthermore, the evidence of record does not directly address the impact of tinnitus on appellant's activities of daily living in a sufficiently probative fashion and, consequently appellant has not established that he is entitled to a schedule award for tinnitus.¹⁴ Dr. O'Connor opined that appellant's tinnitus was "subjective" and presented no objective findings concerning the presence or impact of tinnitus. While Dr. Andreozzi diagnosed tinnitus he provided no objective findings concerning the impact of tinnitus on appellant's activities of daily life and thus his opinion provided no basis for a schedule award for tinnitus.

As appellant's hearing loss is not ratable, he is not entitled to the additional award for tinnitus. Therefore, although his claim for hearing loss was accepted and he is entitled to medical benefits related to this loss, his hearing loss is not now ratable under the Act and thus, appellant is not entitled to a schedule award.

CONCLUSION

The Board finds appellant has not satisfied his burden of proof to establish he sustained a ratable hearing loss or that he is entitled to a schedule award for tinnitus.

¹² *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

¹³ *Id.*

¹⁴ *See Juan A. Trevino*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2010
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