

hertz (Hz) through 8,000 Hz. Dr. Kratz noted that appellant's hearing was "pretty good" at low frequencies and recommended he obtain hearing aids.

Appellant submitted results from audiological evaluation and notes signed by a hearing instrument specialist.

The Office referred appellant, together with a statement of accepted facts for examination by Dr. Claude P. Hobeika, a Board-certified otolaryngologist.

On July 31, 2007 Dr. Hobeika reported findings on examination, diagnosed sensorineural hearing loss and opined that appellant's hearing loss was caused by employment-related noise exposure. An audiogram conducted on July 31, 2007 reflected testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 20, 15, 75 and 75 respectively and 15, 20, 65 and 65 on the left.

The Office referred Dr. Hobeika's report for review by the district medical adviser who, on October 3, 2008, diagnosed noise-induced hearing impairment and opined that appellant sustained 25.625 percent binaural hearing loss.

By decision dated October 18, 2007, the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On January 17, 2008 Dr. Kratz reported that appellant needed to obtain hearing aids to perform his duties at work.

On February 23, 2009 appellant filed a schedule award claim.

By decision dated March 12, 2009, the Office granted appellant a schedule award for 26 percent bilateral hearing impairment.

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* (A.M.A., *Guides*) (5th ed. 2001) as the appropriate 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

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).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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

ANALYSIS

The Office accepted appellant's claim for bilateral sensorineural hearing loss and awarded him a schedule award for 26 percent binaural hearing loss. On appeal appellant argues that he is entitled to additional compensation. His burden is to demonstrate his hearing loss is greater than the 26 percent loss found by Dr. Hobeika and the district medical adviser. This is a medical issue that can only be proven by probative medical opinion evidence.

The Office medical adviser applied the Office's standardized procedures to the July 31, 2007 audiogram obtained by Dr. Hobeika. 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 20, 15, 75 and 75. These totaled 185 decibels which, when divided by 4, produced an average hearing loss of 46.25 decibels. The average of 46.25 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 21.25 and which, when multiplied by the established factor of 1.5 produced 31.88 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 15, 20, 65 and 65. These totaled 165 which when divided by 4, produced an average hearing loss of 41.25 decibels. The average hearing loss of 41.25 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 16.25 which, when multiplied by the established factor of 1.5 produced 24.38 percent hearing loss in appellant's left ear.

The district medical adviser then proceeded to calculate appellant's binaural hearing loss. The 24.38 percent hearing loss on the left, when multiplied by 5, yielded a product of 121.88 which, when added to the 31.88 percent loss in appellant's right ear and divided by 6, yields a 25.63 percent binaural hearing impairment. The Office rounded this figure to 26 percent.

Although appellant contends he is entitled to additional compensation, he has not submitted medical evidence demonstrating his hearing loss has worsened or was improperly calculated. An award of compensation may not be based on surmise, conjecture or speculation.

⁴ A.M.A. *Guides* 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

While appellant submitted notes signed by a hearing instrument specialist and results from audiological evaluations demonstrating varying degrees of hearing loss, these are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by the Office because they were not prepared or certified as accurate by a “physician” as defined by the Act.⁸ It is his burden to submit a properly certified audiogram to the Office.⁹ 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.

CONCLUSION

The Board finds appellant has not established that he sustained greater than 26 percent bilateral hearing impairment.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2009 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 15, 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

⁸ *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231 (1990).

⁹ *Id.*