

On April 20, 1988 Dr. A. Gregory Jameson, a Board-certified internist, reported that auditory testing revealed “decreased auditory acuity.” In a June 26, 1989 note, Dr. William Levine, an internist, reported that auditory testing revealed “diminished hearing in both ears (since 1984).” On April 26, 1993 Dr. Anthony Ditullio, an internist, reported appellant’s hearing was “normal.”

Appellant submitted results from diagnostic tests, reports concerning annual physical and other examinations conducted between 1984 and 2009, and a June 18, 2002 note in which Dr. E. Darryl Walker, Board-certified in occupational medicine, reported that an audiogram revealed the presence of moderate bilateral hearing loss. Several of these historical medical records contained results from hearing tests but lacked the original audiograms. Appellant also submitted results from historical audiograms. In a June 4, 2004 note, Dr. David Greenwald, an orthopedist, reported that an audiogram revealed noise-induced hearing loss.

On July 12, 2006 Dr. Amanda Sahai, Board-certified in family medicine, reported that results from an audiogram were “abnormal.”

Appellant submitted supplemental statements, dated March 26, 2009, documenting his employment history and describing how his employment duties caused his hearing loss.

The Office referred appellant, together with a statement of accepted facts, for evaluation by Dr. Joel Alexander, an otolaryngologist.

On June 23, 2009 Dr. Alexander reviewed appellant’s history of injury, presented findings on examination and diagnosed bilateral sensorineural hearing loss. He opined that appellant’s hearing loss exceeded that normally associated with presbycusis and that workplace noise exposure was sufficient to produce appellant’s hearing loss. An audiogram performed June 23, 2009 reflected testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed hearing losses in appellant’s right ear of 5, 5, 5 and 50 respectively and 10, 5, 10 and 40 on the left.

The district medical adviser reviewed Dr. Alexander’s report and concluded that appellant’s hearing loss was not ratable.

By decision dated July 30, 2009, the Office accepted appellant’s claim for noise-induced hearing loss but, finding that his hearing loss was not ratable, concluded that he 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.¹ The Act, however, does not specify the manner by which the

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).

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

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

On appeal, appellant disputes the Office's findings and determination of his hearing loss.

The Office medical adviser applied the Office's standardized procedures to the June 23, 2009 audiogram obtained by Dr. Alexander. 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 appellant's right ear of 5, 5, 5 and 50 respectively. These totaled 65 decibels which, when divided by 4, produced an average hearing loss of 16.25. The average of 16.25 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 and that, 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, 10 and 40. These totaled 65 which when divided by 4, produced an average hearing loss of 16.25 decibels. The average hearing loss of 16.25 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.

² 20 C.F.R. § 10.404 (2006).

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

⁴ A.M.A., *Guides* 250 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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 appellant's hearing loss is not ratable and he is not entitled to a schedule award.

Although appellant submitted reports containing results from historical audiograms as well as other medical evidence demonstrating the presence of varying degrees of hearing loss, they are insufficient to satisfy appellant's burden of proof as they do not comply with the requirements set forth by the Office because, for example, they lack speech testing and bone conduction scores and were not prepared or certified as accurate by "physician" as defined by the Act.⁸ The Board has held that if an audiogram is prepared by an audiologist its accuracy must be certified by a physician before it can be used to determine the percentage of hearing loss.⁹ It is appellant's burden to submit a properly prepared and certified audiogram to the Office.¹⁰ 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.

Therefore, although appellant's 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 established that he sustained a ratable hearing loss entitling him to a schedule award.

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

⁹ *Joshua A. Holmes*, *supra* note 8.

¹⁰ *Id.*

ORDER

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

Issued: April 21, 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