

The employing establishment responded that appellant had worked in environments that produce hazardous noise during his employment.

The Office referred appellant to Dr. Elizabeth Payne, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated January 15, 2009, Dr. Payne noted appellant's employment-related noise exposure and diagnosed moderately severe high frequency sensorineural hearing losses in both ears worse on the left. She opined that appellant's high frequency hearing loss was aggravated by his work environment. Appellant's audiometric test results on January 15, 2009 demonstrated in the right ear 10 decibels at 500 cycles per second, 10 decibels at 1,000 cycles per second (cps), 20 decibels at 2,000 cycles per second and 20 decibels at 3,000 cycles per second. In the left ear, appellant had decibel loss of 10, 10, 10 and 55, respectively.

The district medical adviser reviewed appellant's claim on January 22, 2009 and found that appellant did not have a ratable impairment in either ear, but that he had significant hearing loss in the left ear at 3,000 cps and that he would benefit from hearing aids in both ears.

By decision dated January 26, 2009, the Office accepted appellant's claim for noise-induced hearing loss. It found that appellant was not entitled to a schedule award, but that he was entitled to medical benefits.

On appeal, appellant alleged that the Office improperly determined that his right ear was worse than his left. He further contends that he experiences tinnitus.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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.⁹ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹⁰

The A.M.A., *Guides* provides that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination: “Therefore, add up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.”¹¹ The A.M.A., *Guides* advises as follows:

“Some impairment classes refer to limitations in the ability to perform daily activities. When this information is subjective and possibly misinterpreted, it should not serve as the sole criterion upon which decisions about impairment are made. Rather, obtain objective data about the severity of the findings and the limitations and integrate the findings with the subjective data to estimate the degree of permanent impairment.”¹²

ANALYSIS

The Office accepted that appellant sustained an employment-related hearing loss; however, the district medical adviser further found that appellant’s hearing loss was not ratable for schedule award purposes. The record contains an audiogram dated January 15, 2009, which indicates that appellant’s right ear had losses of 10, 10, 20 and 20 decibels at 500, 1,000, 2,000 and 3,000 cps. These losses total 60 decibels and averaged equal 15. The fence of 25 cannot be deducted from 15 and appellant does not have a ratable hearing loss in his right ear. On the left appellant’s audiogram indicates decibel losses of 10, 10, 10 and 55 respectively. When totaled, these losses equal 85 decibels and average to 21.25. The fence of 25 cannot be deducted from

⁵ A.M.A., *Guides* at 226-51 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹¹ *Id.*

¹² *Id.*

21.25 and appellant has no ratable hearing loss in his left ear. Accordingly, pursuant to the Office's standardized procedures, the Office properly determined that appellant had no ratable hearing loss in either ear. The Board notes that the record demonstrates that appellant has greater high frequency hearing loss in his left ear. However, the Board further notes that there are no medical reports in the record supporting appellant's claim for tinnitus. Furthermore, as noted above, the A.M.A., *Guides* provide an additional impairment rating for tinnitus only if the underlying hearing loss is measurable. As appellant does not have a ratable hearing loss, he is not entitled to an additional schedule award for tinnitus.

CONCLUSION

The Board finds that appellant has an employment-related binaural loss of hearing, which is not ratable for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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