

employment. He stated that an audiologist from the Air Force Academy advised him that his hearing loss was produced by noise from heating, ventilating and cooling (HVAC) equipment.

By letter dated May 23, 2008, the Office requested that the employing establishment provide information regarding appellant's noise exposure at work. It also advised appellant that the evidence submitted was insufficient to establish his claim. The Office addressed the factual evidence that he needed to submit, including a history of his employment and noise exposure in the stated jobs, whether he was still exposed to noise at work and the dates he first became aware of his hearing loss and first realized that his condition was work related.

The employing establishment submitted annual audiograms conducted between August 30, 2005 and April 2008. Medical records dated September 22, 2002 and November 2, 2005 from the health unit advised that appellant was fit for duty with noise restrictions. Appellant was fitted for hearing protection and was considered to be a borderline candidate for hearing aids.

An April 29, 2008 medical report of Dr. Edgar B. Galloway, a Board-certified otolaryngologist, reviewed a history that appellant's hearing loss had progressively worsened during the past 10 years. He stated that, as a HVAC supervisor for 32 years, appellant was exposed to noise at work. Dr. Galloway diagnosed subjective tinnitus and bilateral sensorineural hearing loss of combined types. He opined that the diagnosed conditions were caused by appellant's employment.

In a May 21, 2008 narrative statement, appellant provided a history of noise exposure in his employment. He worked at a private plumbing company and federal agencies including the current employing establishment. Appellant first became aware of his hearing loss in the mid-1980s as a result of yearly occupational hearing tests which demonstrated bilateral hearing loss. He was currently exposed to noise at the employing establishment four to six hours per day. Appellant wore hearing protection whenever possible.

The employing establishment submitted environmental studies that were performed on intermittent dates between May 30, 1996 and March 4, 2008. The employees working in the mechanical rooms were exposed to hazardous noise and should remain on the hearing conservation program. In a March 19, 2008 letter, the employing establishment acknowledged that appellant was exposed to hazardous noise in the workplace, two to three hours per day.

By letter dated December 28, 2008, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Richard L. Cundy, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. In a November 17, 2008 report, Dr. Cundy reviewed appellant's exposure to loud noise while working as an equipment mechanic at the employing establishment. He opined that this exposure was sufficient in intensity and duration to cause appellant's hearing loss. Dr. Cundy noted that compressors operated at 90 decibels and other machines operated at levels greater than 80 decibels. He diagnosed bilateral neurosensory hearing loss and tinnitus that were due in part to noise exposure. Dr. Cundy recommended hearing aids. He advised that appellant's hearing loss was well beyond what would be expected at his age without noise exposure. Dr. Cundy included a November 17, 2008 audiogram which demonstrated on the right 5 decibels at 500 hertz (Hz);

10 decibels at 1,000 Hz; 30 decibels at 2,000 Hz and 50 decibels at 3,000 Hz. On the left at the same frequency levels, the audiogram demonstrated 10, 10, 40 and 45 decibels, respectively.

On December 11, 2008 an Office medical adviser reviewed the medical evidence. He agreed with Dr. Cundy that appellant sustained binaural sensorineural hearing loss and reached maximum medical improvement on November 17, 2008. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ (A.M.A., *Guides*), the Office medical adviser found that appellant had a 1.88 percent hearing impairment of the left ear and no ratable impairment of the right ear, or in a 1.6 binaural hearing impairment. He opined that appellant had zero percent impairment for tinnitus. The medical adviser authorized hearing aids.

By letter dated January 8, 2009, the Office accepted appellant's claim for binaural hearing loss. On January 21, 2009 appellant filed a claim for a schedule award.

By decision dated February 19, 2009, the Office granted appellant a schedule award for a two percent monaural hearing loss in his left ear.

In a March 4, 2009 letter, he requested reconsideration. Appellant submitted audiograms conducted by the employing establishment between July 24, 1989 and April 4, 2008 which reflected bilateral hearing loss.

In a May 4, 2009 decision, the Office modified the February 19, 2009 schedule award decision to reflect that appellant was entitled to a two percent binaural hearing impairment. The period of the schedule award was from November 17 to December 14, 2008, representing four weeks of compensation.² The Office explained that the original calculation was in error "because the two percent impairment for monaural hearing loss award for 1.04 weeks was less than the award for two percent impairment for binaural hearing loss for 4 weeks."

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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

¹ A.M.A., *Guides* (5th ed. 2001).

² In the May 4, 2009 decision, the Office noted that appellant was previously paid for 1.04 weeks of compensation from November 17 to 24, 2008 for a two percent monaural hearing loss in the left ear based on the February 19, 2009 schedule award decision. Appellant was entitled to an additional 2.96 weeks of compensation for the newly awarded two percent binaural hearing loss (4 weeks less the 1.04 weeks already paid).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹¹

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.¹² However, subjective information regarding the impact of tinnitus on daily life should not be the sole criteria for determining impairment. Objective data must be integrated with the subjective data to estimate the degree of impairment.¹³

ANALYSIS

The Board finds that appellant does not have more than a two percent binaural hearing loss. Dr. Cundy, the Office referral physician, examined appellant and submitted a November 17, 2008 report finding that he sustained bilateral neurosensory hearing loss and tinnitus causally related to his work-related noise exposure. An audiogram of that date accompanied his report.

The Office medical adviser authorized hearing aids and applied the Office's standardized procedures to the November 17, 2008 audiogram. Testing of the right ear at frequency levels of

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ A.M.A., *Guides* 250.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹² *Id.*

¹³ *Robert E. Cullison*, 55 ECAB 570 (2004).

500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 5, 10, 30 and 50, respectively for a total of 95 decibels. When divided by 4, the result is an average hearing loss of 23.75 decibels. The average loss of 23.75 is reduced by 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in 0 percent hearing loss for the right ear.

Testing of the left ear at the same above-noted frequency levels revealed decibel losses of 10, 10, 40 and 45, respectively for a total of 105 decibels. When divided by 4, the result is an average hearing loss of 26.25 decibels. The average loss of 26.25 decibels is reduced by 25 decibels to equal 1.25, which, when multiplied by the established factor of 1.5, results in a 1.875, rounded up to a two percent hearing loss for the left ear.¹⁴

On reconsideration the Office medical adviser then calculated appellant's binaural hearing loss. The 1.88 percent hearing loss for the left ear, when multiplied by five, yielded a product of 9.40. The 9.4 percent loss was then added to the 0 percent hearing loss for the right ear to obtain a total of 9.4. The 9.4 percent loss was then divided by six which resulted in 1.56, rounded up to a 2 percent binaural hearing loss.

The Board finds that the Office medical adviser properly applied the Office's standards to the findings in Dr. Cundy's November 17, 2008 audiogram and concluded that appellant sustained a two percent binaural hearing loss.

Appellant submitted audiograms performed by the employing establishment between July 24, 1989 and April 4, 2008. However, none of the audiograms were certified or accompanied by a physician's discussion of the employment factors believed to have caused or contributed to his hearing loss. The Board finds, therefore, that the audiograms from audiologists do not constitute probative medical evidence.¹⁵

The Board notes that, although Dr. Cundy found that appellant had tinnitus, he did not opine that the condition affected appellant's ability to perform activities of daily living. Further, the Office medical adviser opined that appellant did not have any additional impairment for tinnitus. The Board finds, therefore, that appellant is not entitled to an additional schedule award for tinnitus.

The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.¹⁶ A partial loss of hearing is compensated at a proportionate rate.¹⁷

¹⁴ The Office's procedure manual explains with respect to hearing loss, the number is rounded up from .50 and down from .49. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994); *Carl J. Cleary*, 57 ECAB 563 (2006).

¹⁵ See 5 U.S.C. § 8101(2). See *Robert E. Cullison*, 55 ECAB 570 (2004) (the Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist); See also *Herman L. Henson*, 40 ECAB 341 (1988) (an audiologist is not considered a physician under the Act); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹⁶ 5 U.S.C. § 8107(c)(13)(B).

¹⁷ *Id.* at § 8107(c)(19).

Appellant had two percent binaural hearing loss or entitlement to four weeks of compensation.¹⁸ He has been compensated for his two percent binaural hearing loss.

CONCLUSION

The Board finds that appellant has no more than a two percent binaural hearing loss, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ This figure is reached by multiplying 200 by two percent.