

In a statement accompanying the claim, appellant specified that he was first exposed to workplace noise between April 1979 and May 1983 as a physical science technician with the employing establishment, a position which required him to discharge rifles, pistols, revolvers and shotguns in an enclosed room. After becoming a special agent in September 1983, he attended mandatory firearms training sessions four times a year. Appellant also served as a firearms instructor starting June 1990. In June 2001, he was assigned to a radio operations group and exposed to noise whenever an agent spoke loudly into the “radio milk head.” Appellant denied any preemployment history of ear problems. He was advised by the employing establishment and a specialist on May 22, 2007 that he sustained hearing loss in the “right” ear.

Appellant submitted two audiograms received by the employer on December 24, 2009. The date that each audiogram was taken is illegible. The first exhibited the following decibel (dBA) losses at 500, 1,000, 2,000, 3,000 and 8,000 Hertz (Hz): 10, 5, 5, 15 and 20 for the right ear and 10, 5, 10, 20 and 45 for the left ear. The second exhibited the following losses at the same frequencies: 5, 5, 5, 15 and 20 dBA for the right ear and 5, 5, 10, 20 and 45 dBA for the left ear.

A March 8, 2010 statement of accepted facts acknowledged that appellant was exposed to occupational noise levels above 85 dBA during his employment.

On March 16, 2010 the Office referred appellant for a second opinion to Dr. Stephen M. Bane, a Board-certified otolaryngologist. In a March 31, 2010 report, Dr. Bane examined appellant and observed no physical abnormalities. He stated that appellant had no family history of hearing loss. Appellant reported having continuous tinnitus. An audiogram performed that day exhibited the following dBA losses at 500, 1,000, 2,000 and 3,000, Hz: 5, 0, 5 and 15 for the right ear and 0, 0, 10 and 20 for the left ear. Dr. Bane diagnosed mild to moderate high-frequency sensorineural hearing loss in the left ear starting at 4,000 Hz and climaxing at 8,000 Hz. He also diagnosed binaural tinnitus. Dr. Bane opined that this asymmetric loss exceeded what was normally predicated on presbycusis and was “probably due to” appellant’s extensive history of significant, on-the-job firearms exposure. He advised that appellant wear hearing protection and avoid noise.

By decision dated April 9, 2010, the Office accepted appellant’s claim for sensorineural hearing loss of the left ear and bilateral tinnitus. Appellant filed a claim requesting a schedule award on April 12, 2009.

On April 16, 2010 an Office medical adviser agreed with Dr. Bane’s conclusion that appellant’s monaural hearing loss and tinnitus were caused by occupational noise exposure and identified March 31, 2010 as the date of maximum medical improvement. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ (A.M.A., *Guides*) (hereinafter) to the March 31, 2010 audiometric findings, he found that appellant had no ratable monaural or binaural hearing but “with the addition for tinnitus it is one percent” The Office medial adviser stated that the one percent rating for bilateral tinnitus was included “given the documentation of work[-]relate[d] noise exposure and

¹ A.M.A., *Guides* (6th ed. 2008).

no other predisposing factors indicated in the chart.” He recommended annual audiograms and hearing protection.

By decision dated March 11, 2010, the Office denied appellant’s claim for a schedule award on the grounds that his hearing loss was not ratable.²

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 of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁵ 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the “fence” of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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. The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

ANALYSIS

Appellant filed a claim for hearing loss and the Office developed the matter by referring him to Dr. Bane. After conducting a physical examination and reviewing audiometric data, Dr. Bane opined that appellant sustained mild to moderate high-frequency sensorineural hearing loss in the left ear and bilateral tinnitus related to his occupational noise exposure. The Office medical adviser concurred with these findings, but calculated that appellant did not have a

² The Office noted that appellant remained entitled to medical benefits related to the effects of the injury.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(13).

⁶ *Supra* note 4. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁷ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

ratable hearing loss. Nonetheless, he determined that appellant sustained a one percent binaural hearing impairment on account of his tinnitus. The Office subsequently denied a schedule award on the grounds that appellant's hearing loss was not ratable.

The Office medical adviser applied the Office's standard procedures to the March 31, 2010 audiogram obtained by Dr. Bane. Under the Office's standardized procedures, appellant's left ear recorded losses of 0, 0, 10 and 20 dBA at 500, 1,000, 2,000 and 3,000 Hz, respectively. The total loss was 30 dBA. When divided by 4, the result was an average hearing loss of 7.5 dBA. The average hearing of 7.5 dBA was reduced by the fence of 25 dBA to equal zero dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the left ear. At the same frequency levels, appellant's right ear recorded losses of 5, 0, 5 and 15 dBA. The total loss was 25 dBA. When divided by 4, the result was an average hearing loss of 6.25 dBA. The average hearing of 6.25 dBA was reduced by the fence of 25 dBA to equal zero dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear. As appellant did not sustain a ratable hearing loss in either ear, he is not entitled to a schedule award.

The Office medical adviser opined that appellant has a one percent binaural hearing impairment on account of his tinnitus. The A.M.A., *Guides* provides that, if tinnitus interferes with activities of daily living such as sleeping, reading and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.⁸ The Board has held, however, that a claimant is not entitled to a schedule award for tinnitus if the measurable hearing loss is not ratable under the standards set forth in the A.M.A., *Guides*.⁹ As stated above, appellant did not sustain a ratable hearing loss. Therefore, he is not entitled to any additional schedule award for tinnitus.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a ratable binaural hearing impairment.

⁸ A.M.A., *Guides*, *supra* note 1, at 249. *See also R.D.*, 59 ECAB 127 (2007).

⁹ *Juan A. Trevino*, 54 ECAB 358 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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