



On January 27, 2010 the Office referred appellant, together with a statement of accepted facts, to Dr. Sage Kinney Copeland, a Board-certified otolaryngologist, for a second opinion examination to determine whether he sustained a hearing loss due to noise exposure in his federal employment. In a February 11, 2010 report, Dr. Copeland set forth findings on examination and opined that appellant's mild bilateral high frequency loss was employment related. He noted that appellant's current audiometric findings showed sensorineural loss in excess of what would be expected from presbycusis. Dr. Copeland diagnosed noise-induced moderate right neurosensory hearing loss and moderately severe left neurosensory hearing loss, which was due to noise exposure during his federal employment. He performed an otologic evaluation of appellant on February 11, 2010 and audiometric testing was conducted that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 10, 10, 15 and 35 decibels; left ear 5, 15, 25 and 55 decibels.

By letter dated February 19, 2010, the Office asked the Office medical adviser to review Dr. Copeland's report and determine the extent and degree any employment-related hearing loss. In an opinion of the same date, the Office medical adviser applied the hearing loss standards as set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*) to determine that appellant had zero percent monaural hearing loss in the right ear and a zero percent monaural hearing loss in the left ear. He concluded that appellant had no ratable loss of hearing.

The Office accepted the claim for bilateral sensorineural hearing loss.

On March 16, 2010 Dr. Copeland recommended bilateral hearing aids.

On March 31, 2010 appellant filed a claim for a schedule award for a loss of hearing and submitted a March 31, 2010 report from Michelle Hames containing audiological test results. She reported test results at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second for the right ear of 15, 10, 10 and 30 decibels and of the left ear 20, 15, 25 and 55 decibels.

In an April 19, 2010 decision, the Office denied appellant's claim for a schedule award, finding that the extent of hearing loss was not severe enough to be ratable.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> 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.<sup>3</sup> The A.M.A., *Guides* has been adopted by the

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> See *D.K.*, 61 ECAB \_\_\_\_ (Docket No. 10-174, issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379 (2006).

implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>5</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> 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.<sup>10</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>11</sup>

### ANALYSIS

The Office referred appellant to Dr. Copeland to evaluate the extent and degree of any employment-related hearing loss. Dr. Copeland concluded that appellant sustained a mild bilateral high frequency hearing loss resulting from his exposure to noise at work.

An Office medical adviser agreed with Dr. Copeland's findings and conclusion that appellant's hearing loss was aggravated by his employment. The medical adviser applied the Office's standardized procedures to the February 11, 2010 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 10, 15 and 35 decibels for the right ear. These decibels were totaled at 70 and were divided by 4 to obtain an average hearing loss at those cycles of 17.50 decibels. The average of 17.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the right ear. Testing for the left ear at the frequency levels of

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<sup>4</sup> 20 C.F.R. § 10.404; *see F.D.*, 61 ECAB \_\_\_\_ (Docket No. 09-1346, issued July 19, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010). *See P.B.*, 61 ECAB \_\_\_\_ (Docket No. 10-103, issued July 23, 2010).

<sup>6</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *J.H.*, 60 ECAB \_\_\_\_ (Docket No. 08-2432, issued June 15, 2009); *Thomas O. Bouis*, 57 ECAB 602 (2006); *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 5, 15, 25 and 55 respectively. These decibels were totaled at 100 and were divided by 4 to obtain the average hearing loss at those cycles of 25 decibels. The average of 25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to Dr. Copeland's report and the February 11, 2010 audiogram. The result is a nonratable binaural hearing loss. Although the record contains an audiological report submitted by appellant, it is of no probative value as it was not certified by any physician as accurate and was not accompanied by an audiogram.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not established a ratable loss of hearing. Therefore, appellant is not entitled to a schedule award.

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<sup>12</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss). See also *James A. England*, 47 ECAB 115 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; the Office need not review uncertified audiograms).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 19, 2010 is affirmed.

Issued: March 7, 2011  
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