

condition and its relationship to his employment on October 28, 1985. Appellant did not stop work.

OWCP received audiometric records. An August 13, 1976 audiogram exhibited the following decibel (dBA) losses at 500; 1,000; 2,000 and 3,000 Hertz (Hz): 25, 10, 0 and 5 for the right ear and 30, 25, 15 and 10 for the left ear. At the same frequency levels, an October 12, 1983 audiogram showed dBA losses of 5, 0, 0 and 10 for the right ear and 5, 5, 0 and 10 for the left ear while an April 3, 2000 audiogram recorded dBA losses of 0, 5, 0 and 25 for the right ear and 5, 0, 5 and 30 for the left ear. At 500; 1,000; 2,000 and 3,000 Hz, a March 28, 2007 audiogram revealed losses of 10, 0, 15 and 50 dBA for the right ear and 10, 5, 15 and 35 dBA for the left ear. A March 4, 2008 audiogram exhibited losses of 5, 0, 10 and 50 dBA for the right ear and 15, 10, 10 and 35 dBA for the left ear at the same frequency levels.

The employing establishment provided a summary detailing appellant's history of exposure to workplace noise above 85 dBA, eight-hour time-weighted average (TWA). From September 1976 to October 1988, appellant was exposed to noise above 85 dBA TWA between one and six percent of his workdays. Since October 1988, he was exposed to such noise 11 percent of his workdays. Appellant's predicted noise-induced hearing loss was zero dBA.

In an October 23, 2008 report, Dr. Ting J. Tai, an employing establishment physician Board-certified in occupational medicine, reviewed appellant's audiograms and the 85 dBA TWA summary and concluded that he did not sustain a work-related hearing loss. Specifying that 30 years of unprotected exposure to noise above 85 dBA TWA 100 percent of each workday was expected to bring about a maximum loss of one or two dBA in OWCP's compensable range, Dr. Tai pointed out that appellant was exposed to such noise between 1 and 11 percent of his workdays and wore hearing protection since 1988, which further reduced noise levels at the inner ear by at least 10 dBA. She also observed that the March 4, 2008 audiogram did not demonstrate a ratable loss. As appellant lacked a sufficient history of high-intensity noise exposure, Dr. Tai opined that his federal employment did not contribute to a compensable condition.

A December 15, 2008 statement of accepted facts noted that appellant worked for the employing establishment since September 7, 1976 as a tool maker and machinist supervisor and was exposed to noise generated by punch and hydraulic presses, stud lathes, impact wrenches, air chisels and grinders, chipping hammers, crane horns and ventilation fans, *inter alia*. Appellant wore ear plugs since 1988 and was subjected to noise above 85 dBA TWA six days a week until September 10, 2008. In addition, he sustained vertigo sometime in 1989. Prior to his federal employment, appellant was a doffer from November 1965 to September 1966, a motor transporter for the military from September 1966 to August 1968 and a machinist from September 1968 to February 1975.²

OWCP referred appellant for a second opinion examination to Dr. Robert Hurlbutt, a Board-certified otolaryngologist. In a January 9, 2009 report, after reviewing the statement of accepted facts and the audiometric data, Dr. Hurlbutt observed that the August 13, 1976 audiogram showed mild low-frequency losses in both ears and mild losses at 4,000 and 6,000 Hz

² Although the statement of accepted facts categorized appellant's machinist position for the period September 1968 to February 1975 as federal employment, the record indicates that he was in private industry.

in the right ear while the October 12, 1983 audiogram documented bilateral low-frequency improvement. A January 9, 2009 audiogram exhibited the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 10, 10, 20 and 45 for the right ear and 15, 10, 20 and 40 for the left ear. Apart from high-frequency otoacoustic emission test results, which were outside normal limits, the physical examination was unremarkable. Dr. Hurlbutt opined that appellant sustained bilateral high-frequency sensorineural hearing loss slightly in excess of what would normally be predicated on the basis of presbycusis. He concluded that, although appellant was intermittently exposed to hazardous noise in the course of his federal employment, this exposure was insufficient to cause hearing loss.

By decision dated January 26, 2009, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that he sustained a work-related hearing loss.

Appellant requested reconsideration on October 12, 2009, reiterating that his condition was due to occupational noise exposure.

On November 16, 2009 an OWCP medical adviser reviewed the statement of accepted facts and Dr. Hurlbutt's report and determined that appellant's bilateral sensorineural hearing loss was caused by acoustic trauma on the job. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) to the January 9, 2009 audiometric results, he found that appellant did not have a ratable hearing loss. The medical adviser did not authorize hearing aids and identified January 9, 2009 as the date of maximum medical improvement.

On November 18, 2009 OWCP modified the January 26, 2009 decision in part, finding the medical evidence sufficient to establish that appellant sustained work-related bilateral sensorineural hearing loss. However, it denied a schedule award on the grounds that he did not sustain a ratable impairment.⁴

Appellant requested reconsideration on January 13, 2010 and furnished a December 30, 2009 prescription note from Dr. J. Scott Robertson, a Board-certified otolaryngologist, who recommended binaural digital hearing aids.

By decision dated January 27, 2010, OWCP denied appellant's request for reconsideration on the basis that he did not present new evidence or legal contentions warranting further merit review.

Appellant requested reconsideration on July 19, 2010 and submitted new audiological evidence. At 500, 1,000, 2,000 and 3,000 Hz, a May 17, 2010 audiogram revealed dBA losses of 20, 20, 30 and 60 for the right ear and 15, 15, 25 and 50 for the left ear. At the same frequency levels, a July 12, 2010 audiogram exhibited dBA losses of 25, 25, 30 and 60 for the right ear and 25, 25, 30 and 55 for the left ear. Neither audiogram was certified by a physician.

³ A.M.A., *Guides* (6th ed. 2008).

⁴ OWCP also determined that appellant was not entitled to hearing aids or other medical benefits.

On September 23, 2010 OWCP denied modification of the November 18, 2009 decision.

LEGAL PRECEDENT

FECA's schedule award provision and its implementing regulations⁵ 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.⁶ However, FECA 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.⁷

OWCP 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. Binaural loss is determined by first 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 OWCP's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

Appellant filed a claim for hearing loss and was referred to Dr. Hurlbutt for a second opinion examination. After conducting a thorough examination and reviewing the medical file, Dr. Hurlbutt determined that, while he sustained bilateral high-frequency sensorineural hearing loss, his condition did not result from occupational noise exposure. However, an OWCP medical adviser reviewed the evidence and opined that appellant's injury was due to acoustic trauma in the workplace. Thereafter OWCP accepted that appellant had a work-related binaural hearing loss. However, it denied a schedule award on the grounds that the hearing loss was not ratable.

On November 16, 2009 an OWCP medical adviser applied the A.M.A., *Guides* standard for rating hearing impairment to the January 9, 2009 audiogram obtained by Dr. Hurlbutt. Appellant's right ear recorded losses of 10, 10, 20 and 45 dBA. The total loss was 85 dBA. When divided by four, the result was an average hearing loss of 21.25 dBA. The average

⁵ 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107(c)(13).

⁷ 20 C.F.R. § 10.404. *See also Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁸ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

hearing of 21.25 dBA was reduced by the fence of 25 dBA to 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear. At the same frequency levels, appellant's left ear recorded losses of 15, 10, 20 and 40 dBA at 500, 1,000, 2,000 and 3,000 Hz, respectively. The total loss was 85 dBA. When divided by four, the result was an average hearing loss of 21.25 dBA. The average hearing of 21.25 dBA was reduced by the fence of 25 dBA to equal 0 dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the left ear. Therefore, an OWCP medical adviser properly determined that appellant did not sustain a ratable hearing impairment.

Appellant contends on appeal that the May 17 and July 12, 2010 audiograms that he provided with his request for reconsideration demonstrated a ratable impairment. However, the Board has held that, 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.⁹ Because these audiograms were not certified, they lacked probative value.¹⁰

The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹¹ Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing impairment entitling him to a schedule award.

⁹ *Joshua A. Holmes*, 42 ECAB 231 (1990). Appellant has the burden to submit a properly-certified audiogram for review. *Id.* See also *James A. England*, 47 ECAB 115 (1995).

¹⁰ *R.B.*, Docket No. 10-1512 (issued March 24, 2011).

¹¹ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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