

by factors of his federal employment. While working at the employing establishment since 1980, he was exposed to noise from 1980 to 2000 while working as a machinist. Appellant was exposed to noises from lathes, mills, shapers, drills, grinders, cranes, a sand blaster, compressors, a balancing machine; loud noises generated by manufacturing, repairing and testing processes for shipboard machinery; shop lights producing loud humming noises; appellant was also exposed to loud noise from chipping guns, hammers, impact guns, blowers and air arc welders. He submitted results of audiograms dated 1984 to 2011, which showed varying degrees of hearing loss.

In order to determine whether appellant had any permanent impairment in his right and left ear stemming from his federal employment, OWCP referred him for a second opinion examination with Dr. Ronald P. Peroff, a Board-certified otolaryngologist. An audiogram dated October 31, 2013 with an attached calibration certificate, showed hearing levels of 10, 10, 10 and 30 decibels (dB) on the right at 500, 1,000, 2,000 and 3,000 hertz (Hz), respectively and 10, 10, 20 and 60 dB on the left at 500, 1,000, 2,000 and 3,000 Hz. Dr. Peroff found based on the audiogram results that appellant had a ratable hearing loss of zero percent in the right ear and zero percent in the left, for a binaural hearing loss of zero percent, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition). In a November 3, 2013 report, he stated that appellant's workplace exposure was of sufficient intensity and duration to have caused and/or aggravated noise-induced hearing loss. Dr. Peroff advised that appellant had a significant amount of noise exposure with the employing establishment, which produced bilateral sensorineural hearing loss; however, he stated that, based on the audiograms of record, particularly the October 31, 2013 audiogram, appellant had zero percent, nonratable impairment.

The case record was forwarded to an OWCP medical adviser for review and an opinion as to whether appellant had a ratable hearing loss. In a December 29, 2013 report, Dr. David N. Schindler, a Board-certified internist, reviewed appellant's medical record, Dr. Peroff's November 3, 2013 report and the statement of accepted facts. He concluded that appellant had no ratable hearing loss under the sixth edition of the A.M.A., *Guides*. Dr. Schindler recommended that hearing aids be authorized for the left ear.

By decision dated January 29, 2014, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and authorized purchase of a hearing aid for the left ear.

By decision dated January 29, 2014, OWCP denied appellant's claim for a schedule award based on hearing loss, finding that he did not sustain a ratable hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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, FECA does not

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

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.⁴

OWCP 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 Hz, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

OWCP accepted that appellant sustained a bilateral hearing loss due to noise exposure from his federal employment.¹⁰ The issue is whether appellant sustained a ratable impairment in accordance with the A.M.A., *Guides*, entitling him to a schedule award. Dr. Peroff provided an audiological evaluation and an October 31, 2013 audiogram, which showed a zero percent binaural hearing loss. Appellant's audiogram showed hearing levels of 10, 10, 10 and 30 dB on the right at 500, 1,000, 2,000 and 3,000 Hz, respectively, to find an average of 15. The average of 15 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals zero decibels. With regard to the left ear, the audiogram showed hearing levels of 10, 10, 20 and 60 dB on the left at 500, 1,000, 2,000 and 3,000 Hz, respectively, to find an average of 25. The average of 25 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels. Based on Dr. Peroff's audiogram OWCP's medical adviser determined that appellant did not sustain a bilateral hearing loss.¹¹ The Board finds that he too

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 3.700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *Frantz Ghassan*, 57 ECAB 349 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹¹ A.M.A., *Guides* 249-51.

properly applied the A.M.A., *Guides* to the October 31, 2013 audiogram to determine that appellant did not sustain a ratable hearing loss for schedule award purposes.¹²

Although appellant submitted results from audiometric testing performed from 1984 to 2011, these audiograms are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy appellant's burden of proof.¹³ Dr. Peroff and the medical adviser provided reasoned opinions explaining how appellant's binaural hearing loss was not due to the noise in his employment. The Board finds that Dr. Peroff's report represents the weight of the evidence.

On appeal, appellant alleges that he has ringing in his ears, tinnitus, which should entitle him to a schedule award. The A.M.A. *Guides* allows for compensation of 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.¹⁴ Appellant has not established that he has measurable hearing loss that impacts the activities of his daily living.

Appellant may request a schedule award or increased 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.

The January 29, 2014 decision is affirmed.

CONCLUSION

The Board finds that appellant has not established a ratable, bilateral hearing loss entitling him to a schedule award.

¹² See *S.G.*, 58 ECAB 383 (2007).

¹³ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹⁴ See *Leslie M. Mahin*, 55 ECAB 311 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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