



By letter dated July 6, 2004, the Office advised appellant of the evidence he needed to establish his claim. The Office requested that he submit his employment history for each position held and the source of noise, number of hours exposed per day and the use of safety devices for protection. Appellant submitted a history of employment and noise exposure from 1966 to 2004 as well as annual audiograms dated May 27, 1999, September 5, 2003 and March 11, 2004.

On October 25, 2004 the Office referred appellant, the record and a statement of accepted facts, to Dr. Arthur W. Menken, a Board-certified otolaryngologist, for a second opinion. In a report dated November 16, 2004, Dr. Menken obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps) for air conduction: on the left -- 15, 15, 10 and 30 decibels and right -- 20, 15, 20 and 30 decibels. Dr. Menken diagnosed bilateral tinnitus and bilateral high tone neurosensory hearing loss caused by long-term work-related noise exposure. He concluded that the hearing loss was in the high tones only and was not significant enough to cause conversational hearing impairment. Regarding tinnitus, Dr. Menken reported that although it may be annoying it was not disabling.

On February 21, 2005 an Office medical consultant, Dr. Ira D. Rothfeld, a Board-certified otolaryngologist, reviewed the otologic and audiologic findings submitted by Dr. Menken in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed.). Dr. Rothfeld concurred with Dr. Menken's assessment that appellant's hearing loss in high frequencies was not sufficient enough to result in conversational impairment. He determined that appellant had a binaural hearing loss which was not ratable for schedule award purposes.

In a decision dated March 8, 2005, the Office denied appellant's schedule award claim, finding that the extent of his permanent impairment was not ratable under the A.M.A., *Guides* (5<sup>th</sup> ed.).

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of schedule members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member 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* (5<sup>th</sup> ed.) has been adopted by the Office for evaluating schedule losses.<sup>3</sup>

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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 20 C.F.R. § 10.404; see also *David W. Ferrall*, 56 ECAB \_\_\_\_ (Docket No. 04-2142, issued February 23, 2005).

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>5</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>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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>8</sup> The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.<sup>9</sup>

Regarding tinnitus, the A.M.A., *Guides* states:

“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.”<sup>10</sup>

### ANALYSIS

The Board finds that the report and audiogram performed by Dr. Menken constitutes the weight of the medical evidence of record and establishes that the diagnosed hearing loss is not ratable under the protocols of the A.M.A., *Guides*. The Office medical consultant, Dr. Rothfeld, applied the proper standards to the audiometric findings in Dr. Menken’s November 16, 2004 report resulting in a nonratable loss.

Dr. Menken opined that appellant had an employment-related hearing loss which was in the higher tones and was not significant enough to result in conversational impairment. The Office medical consultant, Dr. Rothfeld, calculated the extent of hearing loss as follows: the decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cps were 15, 15, 10 and 30 decibels which totaled 70 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 17.5 decibels. The average of 17.5 decibels was reduced by the “fence” of 25 decibels to obtain the average hearing loss at those frequencies of 0 decibels, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear. The decibel loss for the left ear at 500,

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<sup>4</sup> A.M.A., *Guides* at 250.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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

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

<sup>9</sup> *Donald E. Stockstad*, 53 ECAB 310 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>10</sup> A.M.A., *Guides* at 246.

1,000, 2,000 and 3,000 cps were 20, 15, 20 and 30 decibels which totaled 85 decibels and divided by 4 to obtain the average hearing loss at those frequencies of 21.25 decibels, which was reduced to 0 decibels when the “fence” of 25 decibels was subtracted, which was then multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

On appeal, appellant notes that he has ringing in both ears. However, the A.M.A., *Guides* only allows for an impairment rating for tinnitus, up to five percent, when there is a measurable hearing loss and only if the tinnitus impacts the ability to perform activities of daily living.<sup>11</sup> As noted above, appellant’s hearing loss is not ratable. Accordingly, the Board finds he is not entitled to a schedule award for tinnitus.

**CONCLUSION**

The Board finds that appellant has not established a ratable loss of hearing causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated March 8, 2005 is affirmed.

Issued: July 26, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

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

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<sup>11</sup>*Id.*; see David W. Ferrall, Docket No. 04-2142 (issued February 23, 2005).