

due to noise exposure in the workplace.² He became aware of his condition and its relationship to his employment on November 2, 2009. Appellant previously stated in December 21, 2009 questionnaires that he was exposed to loud noise during his 8- to 12-hour shifts. He denied any preexisting ear injuries and pointed out that he wore earplugs “when it became required.”

An October 9, 1974 audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 0, 0, 0 and 10 for the right ear and 5, 0, 5 and 25 for the left ear. At the same frequency levels, an April 11, 1984 reference audiogram from the employing establishment showed dBA losses of 5, 5, 5 and 15 for the right ear and 20, 20, 10 and 35 for the left ear while a November 2, 2009 audiogram showed dBA losses of 5, 10, 35 and 35 for the right ear and 5, 10, 50 and 45 for the left ear.

An undated employing establishment record noted appellant’s history of exposure to occupational noise above 85 dBA using an eight-hour time-weighted average. For the periods August 1965 to July 1967 and July 1967 to February 1972, appellant was exposed to such noise 98 and 41 percent of his workdays, respectively. Thereafter, he was exposed between zero and six percent of his workdays for approximately 30 years. Based on this data as well as the April 11, 1984 and November 2, 2009 audiograms, Dr. Ting J. Tai, an employing establishment physician Board-certified in occupational medicine, determined in a January 19, 2010 report that appellant did not sustain a compensable hearing loss as he lacked sufficient, long-standing exposure to high-intensity noise.

A February 18, 2010 statement of accepted facts detailed that appellant worked for the employing establishment from August 23, 1965 until January 2, 2010. His positions included trades helper, parts keeper, material segregator and expeditor, artillery repairer and foreman, shop manager and pneudraulic systems mechanic supervisor. During his tenure, appellant was exposed to loud noise generated by hydraulic and electric motors, welders, hammers, sanders, gunfire testing, tanks, cranes, forklifts and other heavy machinery. He first received mandatory ear protection in 1983.

On February 23, 2010 the Office referred appellant for a second opinion to Dr. Blane E. Bateman, an osteopath specializing in otolaryngology. In a March 18, 2010 report, Dr. Bateman observed no irregularities on physical examination. He noted that appellant’s October 9, 1974 audiogram showed normal hearing in the right ear and borderline, high-frequency hearing loss in the left ear. A March 18, 2010 audiogram indicated diminished discrimination scores of 80 and 68 percent for the right and left ear, respectively and exhibited the following losses at 500, 1,000, 2,000 and 3,000 Hz: 5, 0, 25 and 40 dBA for the right ear and 10, 5, 40 and 45 dBA for the left ear. In view of appellant’s discrimination scores, noise notch patterns, history of significant noise exposure at the workplace and failure to use earplugs for approximately 20 years, Dr. Bateman diagnosed employment-related sensorineural hearing loss. After comparing the October 9, 1974 and March 18, 2010 audiograms, he further opined that this loss exceeded what could normally be attributed to presbycusis. Dr. Bateman recommended hearing conservation.

On April 26, 2010 an Office medical adviser agreed with Dr. Bateman’s conclusion that appellant’s binaural hearing loss was caused by occupational noise exposure and identified

² Appellant retired effective January 2, 2010.

March 18, 2010 as the date of maximum medical improvement. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*) (hereinafter) to the March 18, 2010 audiometric findings, he found that appellant did not have a ratable hearing loss. The Office medical adviser did not recommend authorizing hearing aids.

By decision dated April 28, 2010, the Office accepted appellant's claim for hearing loss due to employment-related noise exposure, but denied a schedule award on the basis that his hearing loss was not ratable. It also found that the weight of the medical evidence established that he would not benefit from hearing aids.

LEGAL PRECEDENT

The schedule award provision of the Act⁴ and its implementing regulations⁵ 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. 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, 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.⁷

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.⁸

³ A.M.A., *Guides* (6th ed. 2008).

⁴ 5 U.S.C. § 8107.

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).

ANALYSIS

Appellant filed a claim for binaural hearing loss and the Office referred him to Dr. Bateman. After performing a physical examination and reviewing the statement of accepted facts and audiometric data, Dr. Bateman opined in a March 18, 2010 report that he sustained sensorineural hearing loss related to occupational noise exposure. The Office medical adviser concurred with these findings on April 26, 2010, but calculated that appellant did not have a ratable hearing loss. It subsequently denied a schedule award in an April 28, 2010 decision.

The Office medical adviser applied the Office's standard procedures to the March 18, 2010 audiogram obtained by Dr. Bateman. Under the Office's standardized procedures, appellant's left ear recorded losses of 10, 5, 40 and 45 dBA at 500, 1,000, 2,000 and 3,000 Hz. The total loss was 100 dBA. When divided by 4, the result was an average hearing loss of 25 dBA. The average hearing of 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. At the same frequency levels, appellant's right ear recorded losses of 5, 0, 25 and 40 dBA. The total loss was 70 dBA. When divided by 4, the result was an average hearing loss of 17.5 dBA. The average hearing of 17.5 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 right ear. As appellant did not sustain a ratable hearing loss in either ear, he is not entitled to a schedule award.

The Board finds that the Office medical adviser applied the proper standards to the March 18, 2010 audiogram obtained by Dr. Bateman. The result is a nonratable binaural hearing loss. Although the record contains other audiograms submitted by appellant, these are of no probative value as they have not been certified by a physician as accurate.⁹

CONCLUSION

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

⁹ 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 April 28, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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