

On October 25, 2007 appellant, then a 61-year-old motor vehicle operator, filed an occupational disease claim alleging that he sustained hearing loss due to hazardous noise levels in the course of his federal employment. He first became aware of his hearing loss and related it to his employment on September 28, 2007. Appellant's last exposure to workplace noise was on October 1, 2007, the date on which he retired.

On November 6, 2007 the Office requested additional evidence. Subsequently, appellant and the employing establishment submitted evidence pertaining to his work at the employing establishment from 1965 to 2007 and exposure to noise from various sources. Additionally, several audiograms, dated between August 30, 1977 and October 9, 2007, were submitted.

On December 4, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Richard Dawson, a Board-certified otolaryngologist, for a second opinion evaluation.

In a January 9, 2008 report, Dr. Dawson noted examining appellant on January 8, 2008 and reviewed his medical history. He advised that appellant had normal audiogram results at the beginning of his federal employment on August 30, 1977. Dr. Dawson compared the present audiometric findings to the 1977 tests and found that appellant had a sensorineural hearing loss in excess of what would normally be predicated on the basis of presbycusis. He identified appellant's workplace exposures as sufficient in intensity and duration to cause hearing loss. Dr. Dawson diagnosed bilateral high-tone sensorineural hearing loss due to noise exposure in appellant's federal employment. He noted that the fact that one ear differed from the other may be accounted for by the open window on the driver's side of the trucks appellant drove. Dr. Dawson recommended left ear amplification. He found that appellant had zero percent monaural impairment of the right ear and six percent monaural impairment of the left ear. A January 8, 2008 audiogram performed on Dr. Dawson's behalf showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second: 10, 10, 15 and 35 for the right ear and 15, 20, 30 and 50 for the left ear.

By decision dated January 28, 2008, the Office accepted appellant's claim for binaural sensorineural hearing loss.

On January 31, 2008 an Office medical adviser reviewed Dr. Dawson's January 9, 2008 otologic examination report and audiometric test results. He concluded that appellant had a 5.6 percent monaural hearing loss in the left ear. The Office medical adviser opined that hearing aids should be authorized and that the date of maximum medical improvement was January 8, 2008, the date of Dr. Dawson's examination. On July 10, 2008 appellant filed a claim for a schedule award.

By decision dated July 15, 2008, the Office granted a schedule award for 5.6 percent monaural hearing loss of the left ear. The period of the award ran for 3.12 weeks from January 8 to 29, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations 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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results

and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.¹

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 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. 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.²

ANALYSIS

Appellant filed a claim for hearing loss and the Office developed the claim by referring him to Dr. Dawson who found that appellant’s hearing loss was due to noise exposure encountered in his workplace. Dr. Dawson had an audiogram performed on his behalf and recommended amplification for the left ear.

The Office medical adviser applied the Office’s standard procedures, as noted in the January 8, 2008 audiogram. It tested decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 10, 10, 15 and 35 respectively in the right ear. The total decibel loss in the right ear is 70 decibels. When divided by 4, the result is an average hearing loss of 17.5 decibels. The average loss of 17.5 decibels is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 15, 20, 30 and 50 respectively for a total decibel loss of 115 decibels. When divided by 4, the result is an average hearing loss of 28.75 decibels. The average loss of 28.75 is reduced by the fence of 25 decibels to equal 3.75, which when multiplied by the established factor of 1.5, resulted in 5.625 percent impairment of the left ear.

The Office medical adviser concluded that appellant had 5.6 percent hearing loss in the left ear and the Office’s July 15, 2008 schedule award decision states that appellant has 5.6 percent impairment. The Board notes, however, that Office policy is to round the calculated percentage of impairment to the nearest whole number.³ Thus, appellant’s left ear hearing loss

¹ *Harry Butler*, 43 ECAB 859 (1992). See 20 C.F.R. § 10.404.

² *E.S.*, 59 ECAB ____ (Docket No. 07-1587, issued December 10, 2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (October 1990).

should be rounded to six percent impairment. However, the Board notes that this error is harmless as the Office's July 15, 2008 decision reflects that the period of the award, January 8 to 29, 2008, represents the number of weeks' compensation is to be paid in proportion to the percentage loss of use for permanent loss of appellant's hearing. As noted, when the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use. The compensation schedule in the Act provides that the maximum number of weeks of compensation for hearing loss in one ear is 52 weeks.⁴ Six percent of 52 weeks is 3.12 weeks of compensation, which is the period that the Office paid appellant.

On appeal, appellant asserts that his hearing loss occurred from 1997 to 2007 and questions why this period was not considered for compensation. As noted, section 8107 provides for payment of the schedule awards in proportion to the percentage of loss of use. Six percent monaural hearing loss yields 3.12 weeks of compensation. Regarding the time at which the 3.12 weeks of compensation begins to run, it is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The determination of whether maximum medical improvement has been reached was based on the medical evidence of record. The date is usually the date of the medical examination which determined the extent of the impairment.⁵ Here, the date of the examination on which the schedule award was based is Dr. Dawson's January 8, 2008 examination. The Board has noted that factors such as employability or limitations on daily activities have no bearing on the calculation of a schedule award.⁶ The Board finds that the Office paid appellant's compensation for the appropriate time period.

CONCLUSION

The Board finds that the Office's July 15, 2008 decision awarded appellant compensation for the appropriate period. The decision is modified to reflect that appellant's employment-related hearing loss is six percent of the left ear.

⁴ 5 U.S.C. § 8107(c)(13)(a).

⁵ See *Richard Larry Enders*, 48 ECAB 184 (1996); see also *P.C.*, 58 ECAB ____ (Docket No. 07-410, issued May 31, 2007).

⁶ *Kimberly M. Held*, 56 ECAB 670 (2005).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 15, 2008 is affirmed, as modified.

Issued: June 15, 2009
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