

On October 15, 2004 appellant, then a 74-year-old retired sheetmetal helper/pipefitter, filed an occupational disease claim alleging that he sustained a hearing loss in both ears as a result of noise exposure at work. The Board notes that the Office previously accepted appellant's claim for a work-related hearing loss in his left ear. It issued a schedule award in

1976 for 30 percent impairment to his left ear, or 15.6 weeks of compensation. No hearing aids were authorized at that time.

On January 23, 2006 the Office referred appellant to Dr. Alan Keyes, a Board-certified otolaryngologist, in order to determine the extent and degree of hearing loss as a result of his federal employment. In a medical report dated February 13, 2006, Dr. Keyes diagnosed appellant with sensorineural hearing loss and tinnitus. He noted that audiometric testing was conducted on appellant's behalf on that date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear air -- 20, 30, 70 and 75 decibels; right ear bone -- 20, 30, 70 and 70; left ear air -- 15, 35, 70 and 80 and left ear bone -- 15, 35, 70 and 75. Dr. Keyes calculated appellant's hearing impairment as follows: average hearing loss in the right ear (air) equals 48.75 minus a fence of 25 equals 23.75 multiplied by 1.5 equaled a 35.63 percent hearing loss in appellant's right ear. With regard to the left ear, he noted that the average hearing loss in the left ear was 50 decibels from which he subtracted the fence of 25 and multiplied by 1.5 to equal 37.5 percent impairment in appellant's left ear. Dr. Keyes determined appellant's hearing loss by multiplying 35.63 (hearing impairment in the better ear) by 5 and adding 37.5 percent (hearing loss in the poorer ear) and dividing the sum by 6 to arrive at his conclusion that appellant sustained a 35.94 percent binaural hearing loss. He also recommended hearing aids.

By letter dated March 13, 2006, the Office accepted appellant's claim for bilateral sensorineural hearing loss with tinnitus. In a report dated March 20, 2006, an Office medical adviser reviewed the audiogram obtained by Dr. Keyes. In applying the Office's standard formula for determining impairment due to hearing loss, he agreed that appellant had a 35.9 percent binaural hearing loss. He also recommended hearing aids.

On May 16, 2006 appellant filed a claim for a schedule award.

By letter dated July 27, 2006, the Office claims examiner advised the Office medical adviser that appellant previously received a schedule award, Office File No. 250085051, for 30 percent impairment to his left ear. The physician was asked if this changed the impairment rating or date of maximum medical improvement. By letter dated July 28, 2006, the Office medical adviser requested the audiogram and report on which the previous schedule award was based. The Office forwarded an October 18, 1976 audiometric report and November 24, 2006 worksheet calculating the 30 percent monaural impairment to appellant's left ear. On August 30, 2006 the Office medical adviser stated:

"The claimant's impairment rating does need to be amended taking into account [his] previous award. *I have used the difference between the percent impairment ratings from the previously schedule award in 1976 and the most recent impairment ratings to calculate the additional percentage impairment for this most recent schedule award.* The appropriate and warranted permanent percentage impairment for the claimant's hearing loss, based upon the 5th [e]dition of the [American Medical Association,] *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), is 35.65 percent monaural in the right ear, 7.5 percent monaural in the left ear and a 12.19 percent binaural hearing loss. The date of maximum medical improvement is February 13, 2006 and the

calculations for the impairment rating are generated from the most recent audiogram which was performed on this date and are included on the completed CA-51 form.

“The claimant’s workplace noise exposure while with the [F]ederal [G]overnment (as described in the information provided) was sufficient in duration and intensity to have contributed to his loss demonstrated at the date of maximum medical improvement. Therefore, the medical evidence does support the ... authorization of hearing aids to treat his condition.” (Emphasis added.)

On September 15, 2006 the Office granted a schedule award for an additional 12 percent binaural loss of hearing.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ provides for compensation to employees sustaining permanent loss of use, of specified members of the body. 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 sounds 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 A.M.A., *Guides* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.²

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

With regard to preexisting impairment of a scheduled member, the Office’s procedure manual provides that any previous impairment to the member under consideration is included in calculating the percentage of loss.⁷

¹ 5 U.S.C. §§ 8101-8193.

² See 20 C.F.R. §10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

³ A.M.A., *Guides* 250.

⁴ *Id.*

⁵ *Id.*

⁶ *Renaldo R. Lichenberger*, 52 ECAB 462 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(2) (August 2002).

ANALYSIS

In 1976, the Office accepted appellant's claim for 30 percent permanent impairment to his left ear and issued a schedule award for a period of 15.6 weeks of compensation. Appellant filed a claim for additional hearing loss and he was referred for examination by Dr. Keyes. On February 13, 2006 Dr. Keyes determined that appellant had sustained a 35.94 percent binaural hearing loss. Audiometric testing obtained by Dr. Keyes for the recorded frequencies at 500, 1,000, 2,000 and 3,000 cps revealed right ear losses of 20, 30, 70 and 75 decibels and left ear loss of 15, 35, 70 and 80 decibels. The right ear total decibel loss of 195 was divided by 4 to total an average hearing loss of 48.75 decibels. The fence of 25 decibels was then subtracted from this amount, to equal 23.75 decibels. This amount was multiplied by the factor of 1.5 to arrive at a total 35.62 percent monaural loss to the right ear. The left ear total decibel loss of 200 was divided by 4 to total an average hearing loss of 50 decibels. The fence of 25 decibels was then subtracted from this amount, to equal 25 decibels. This amount was multiplied by the factor of 1.5 to total 37.5 percent monaural hearing loss to the left ear. Dr. Keyes properly applied the Office formula for determining binaural hearing loss by multiplying the 35.62 right ear loss by 5, as it was the lesser loss, to find a product of 178.1. He then added this amount to the 37.5 percent left ear loss to total 215.6, which was divided by 6 to total a binaural hearing loss of 35.94 percent.⁸

The Office referred Dr. Keyes' report to an Office medical adviser who agreed that appellant had a 35.94 percent binaural hearing loss. However, the Office medical adviser was subsequently instructed to consider what effect the prior impairment rating of 30 percent monaural hearing loss to the left ear would have on the claim.

The Office medical adviser reapplied the Office's formula: deducting the prior 30 percent left ear loss from the 37.5 percent left ear hearing loss as found in the audiogram obtained for Dr. Keyes. He noted that this resulted in a 7.5 percent hearing loss, to which he applied the remainder of the Office's formula to find a 12 percent binaural hearing loss.⁹ Based on this application of the Office's formula, appellant received a schedule award in this amount. However, the Board notes that this is not a proper application of the Office's hearing loss formula. There is no provision in the formula for deducting a prior hearing loss from the audiometric test results reported by Dr. Keyes. As noted in the Office's procedure manual, any previous impairment to the member under consideration is included in calculating the total percentage of loss.¹⁰ It is only after calculating the total number of weeks of compensation that the loss represents that a prior schedule award is then deducted.

⁸ Office procedures provide that in computing binaural hearing loss, percentages should not be rounded until the final percent for award purposes is obtained. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (March 2005). The Board notes that when the final percentage is rounded up, the net result is a 36 percent binaural hearing loss.

⁹ Multiplying 7.5 by 5, as it now represented the lesser loss, results in a product of 37.5. Adding this amount to 35.65 totals 73.15 which, when divided by 6 totals 12.19, rounded down to 12 percent.

¹⁰ *See supra* note 7.

The Board finds that appellant has more than a 12 percent binaural loss of hearing. Appellant's loss of hearing to the left ear was 37.5 percent with a 35.65 percent hearing loss in his right ear. As noted, application of the Office's standard formula results in a 36 percent binaural hearing loss. Multiplying 36 percent by the 200 weeks provided for binaural hearing loss results in a total of 72 weeks of compensation. As appellant already received compensation for 15.6 weeks in the 1976 monaural schedule award, this amount is deducted from 72 weeks to total 56.4 weeks of compensation. This is the amount of compensation which appellant should receive for his binaural hearing loss, an amount substantially greater than the 24 weeks awarded by the Office. Accordingly, the Board will modify the September 15, 2006 Office decision to reflect that appellant has a 36 percent binaural hearing loss.

In its March 13, 2006 letter, the Office accepted tinnitus in addition to the bilateral hearing loss. The A.M.A., *Guides* provides that 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 the activities of daily living.¹¹ However, the record contains no medical evidence directly addressing the impact of tinnitus on appellant's activities of daily living. Therefore he is not entitled to an additional schedule award for this condition.

CONCLUSION

The Board finds that appellant has a 36 percent binaural hearing loss and is eligible to receive a total of 56.4 weeks of compensation.

¹¹ *Supra* note 3 at 246.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2006 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: October 2, 2007
Washington, DC

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

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

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