

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant

and

**DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD,
Charleston, SC, Employer**

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**Docket No. 12-15
Issued: May 7, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2011 appellant filed a timely appeal from a July 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than 39 percent bilateral hearing loss for which he received a schedule award.

FACTUAL HISTORY

This case has previously been before the Board. OWCP previously accepted an employment-related monaural hearing loss in appellant's left ear in 1983.² Appellant was

¹ 5 U.S.C. §§ 8101-8193.

² File No. xxxxxx735.

granted a schedule award for 18 percent monaural hearing loss to his left ear. The period of the award was for 7.80 weeks and ran from December 21, 1983 to February 24, 1984.

On February 4, 2011 the Board set aside OWCP's February 4, 2010 decision denying appellant's claim that he sustained a loss of hearing in the performance of duty. The Board noted that OWCP previously accepted employment-related hearing loss in his left ear and that a second opinion examiner attributed his right ear low-to-mid frequency loss to his noise exposure in his federal employment. The case was remanded for OWCP to consolidate appellant's claims relating to his binaural hearing loss and to further develop the medical evidence as to the extent of permanent impairment related to his hearing loss.³ The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.

In an April 27, 2011 second opinion examination report, Dr. William R. Lomax, a Board-certified otolaryngologist, noted appellant's diagnoses of neural sensory hearing loss and tinnitus and reviewed his medical records. He stated that a comparison of appellant's preemployment audiogram and his most current audiogram demonstrated a progression of bilateral hearing loss. Upon examination, Dr. Lomax reported that appellant had a severe bilateral neurosensory hearing loss consistent with acoustic trauma and presbycusis and opined that upon retirement his hearing loss had increased and was calculated to be 39 percent. He stated that the above-described sensory neural hearing loss had been caused by appellant's history of noise exposure while working for the Charleston Naval Shipyard. Dr. Lomax recommended no more exposure greater than 85 decibels, ear protectors when exposed to loud noise and hearing aids.

An April 25, 2011 audiogram performed on his behalf showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 15, 25, 65 and 80 decibels for the right ear and 25, 30, 70 and 90 decibels for the left ear. Dr. Lomax diagnosed bilateral neurosensory hearing loss and bilateral tinnitus. He determined the date of maximum medical improvement as April 25, 2011, the date of the audiogram on which the report was based and recommended hearing aids.

On May 2, 2011 an OWCP medical adviser reviewed Dr. Lomax's report and determined that the audiograms were consistent with noise-induced hearing loss. Using the April 25, 2011 audiogram, the medical adviser determined that appellant had 31.88 percent monaural hearing loss in the right ear, 43.13 percent monaural hearing loss in the left ear or 33.75 percent binaural hearing loss pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). According to the results of the April 25, 2011 audiogram, decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz were 15, 25, 65 and 80 decibels for the right ear (for a total of 185) and 25, 30, 70 and 90 decibels for the left ear (for a total of 215). The average loss for the right ear was 46.25, which was reduced by the fence of 25 to equal 21.25 decibels. This amount was then multiplied by 1.5 to equal 31.88 decibels, as the right monaural loss. The average loss for the left ear was 53.75, which

³ Docket No. 10-1013 (issued February 4, 2011). On November 9, 2009 appellant, then a 70-year-old former supply technician, filed an occupational disease claim alleging an increase in hearing loss in both ears due to his federal employment. In a decision dated February 4, 2010, OWCP denied his claim for binaural hearing loss finding insufficient medical evidence to establish that his hearing loss was causally related to his federal employment. It noted that appellant suffered from moderate-to-severe binaural mid-to-high frequency hearing loss in a pattern consistent with noise exposure, but not as a result of his federal employment, with the exception of right ear low-to-mid frequency.

was reduced by the fence of 25 to equal 28.75 decibels. This amount was then multiplied by 1.5 to equal 43.13 decibels, as the left monaural loss. To calculate binaural loss, the lesser loss of 31.88 decibel was multiplied by 5 to equal 159.4 and then added to the greater loss of 43.13 to total 202.53. This sum was then divided by 6, resulting in binaural loss of 33.75. Since tinnitus impacted appellant's ability to perform activities of daily living, 5 percent was added to total 38.75, which was rounded to 39 percent. The medical adviser determined that the date of maximum medical improvement was April 25, 2011, the date of the audiogram on which the report was based. Since appellant was granted a previous schedule award, that amount should be subtracted from the current schedule award.

In a decision dated May 3, 2011, OWCP accepted appellant's claim for bilateral hearing loss with tinnitus.

On July 25, 2011 appellant submitted a request for a schedule award.

By decision dated July 27, 2011, OWCP granted appellant a schedule for a 39 percent bilateral hearing loss with tinnitus. The period of the award was for 78.0 weeks. As appellant was previously paid a schedule award for 9.36 weeks, OWCP determined that he was entitled to 68.64 weeks. The period of the award ran from April 25, 2011 to August 17, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. 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* (sixth edition 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁵

OWCP 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 Hz, 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 OWCP's adoption of this standard for

⁴ *Supra* note 1.

⁵ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

evaluating hearing loss.⁶ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁷

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.⁸ The A.M.A., *Guides* state that if tinnitus interferes with Activities of Daily Living (ADLs), including sleep, reading (and other tasks requiring concentration), enjoying of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.⁹

ANALYSIS

OWCP accepted appellant's claim for bilateral hearing loss and referred appellant to Dr. Lomax for a second opinion examination. In an April 27, 2011 second opinion report, Dr. Lomax diagnosed severe bilateral neurosensory hearing loss caused by appellant's history of noise exposure while working for the employing establishment. After reviewing Dr. Lomax's April 27, 2011 audiogram and report, the medical adviser correctly applied OWCP's standardized procedures to the results. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 25, 65 and 80 decibels for a total of 185. This total was divided by 4 to obtain the average hearing loss of 46.25, which was reduced by the fence of 25 to equal 21.25 decibels. This amount was then multiplied by 1.5 to equal 31.88 decibels, as the right monaural loss. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 25, 30, 70 and 90 decibels for a total of 215. The total was divided by 4 to obtain the average hearing loss of 53.75, which was reduced by the fence of 25 to equal 28.75 decibels. This amount was then multiplied by 1.5 to equal 43.13 decibels, as the left monaural loss. To calculate binaural loss, the lesser loss of 31.88 decibel was multiplied by 5 to equal 159.4 and then added to the greater loss of 43.13 to total 202.53. This sum was then divided by 6, resulting in binaural loss of 33.75. Since tinnitus impacted appellant's ability to perform ADLs, 5 percent was added to total 38.75 percent, which was rounded to 39 percent. The Board finds that the medical adviser applied the proper standards to the April 25, 2011 audiogram and correctly determined that appellant had a 39 percent binaural hearing loss. Thus, appellant has not established that he has more than 39 percent binaural hearing loss, for which he received a schedule award.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.¹⁰ FECA provides that a claimant is entitled to 52 weeks of compensation for a 100 percent loss of hearing in one ear and 200 weeks' compensation for 100 percent hearing loss in both ears. Multiplying 39 percent by the 200 weeks provided for binaural hearing loss results in a total of 78 weeks of compensation. OWCP's procedure manual further provides that any previous impairment to the member under consideration is included in

⁶ E.S., 59 ECAB 249 (2007); Reynaldo R. Lichtenberger, 52 ECAB 462 (2001).

⁷ J.H., Docket No. 08-2432 (issued June 15, 2009); Robert E. Cullison, 55 ECAB 570 (2004). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

⁸ See A.M.A., *Guides* 249.

⁹ *Id.* See also R.H., Docket No. 10-2139 (issued July 13, 2011); Robert E. Cullison, *supra* note 7.

¹⁰ 5 U.S.C. § 8107.

calculating the total percentage of loss.¹¹ As appellant already received compensation for 9.36 weeks in the 1983 monaural schedule award, this amount is deducted from 78 weeks to total 68.64 weeks of compensation. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant sustained a 39 percent binaural hearing loss and is not entitled to a greater schedule award than granted.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2011 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2012
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

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).