



levels of noise from cargo, seaport, airport and railroad operations. He first became aware of his hearing loss and of its relationship to his employment on December 28, 2011. Appellant did not stop work.

By letter dated January 20, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

By letter dated January 5, 2012, appellant provided details regarding his employment-related noise exposure, stating that he had been employed as a customs and border protection officer since January 13, 1997. He was assigned to the Port of Brownsville with a exposure to gas and diesel engines on a continuous basis.

The employing establishment provided a noise monitoring report for the Los Indios International Bridge Facility, which provided average levels and maximum levels of noise exposure at appellant's various work stations.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Gregory R. Rowin, an otolaryngologist, for a second opinion evaluation. An audiogram was completed on March 13, 2012 which revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 25, 25, 40 and 50 for the right ear and 55, 50, 85 and 85 for the left ear. Speech reception thresholds were 30 dB on the right and 60 dB on the left, while auditory discrimination scores were 80 percent on the right and 48 percent on the left. Dr. Rowin reported that appellant complained of hearing problems getting gradually worse over the past six to seven years. He diagnosed a mild to severe sensorineural loss in the right and moderate to profound sensorineural loss in the left. Dr. Rowin stated that appellant would benefit from a hearing aid evaluation and recommended binaural hearing aids. He also recommended a magnetic resonance imaging scan to rule out any retro-labyrinthine lesions. Dr. Rowin opined that appellant's hearing loss was in excess of what would normally be predicated on the basis of presbycusis and that his workplace noise exposure caused his bilateral sensorineural hearing loss.

Applying the standard provided by the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*) to the March 13, 2012 audiometric data, Dr. Rowin calculated that appellant sustained 15 percent monaural hearing impairment in the right ear and 65.6 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 23.4 percent. Dr. Rowin added 5 percent impairment for tinnitus, for a total of 28.4 percent binaural hearing impairment (23.4 percent + 5 percent for tinnitus). He listed March 13, 2012 as the date of maximum medical improvement and recommended hearing aids.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On April 23, 2012, an OWCP medical adviser reviewed Dr. Rowin's March 13, 2012 otologic examination report and agreed that appellant's bilateral sensorineural hearing loss was due to his occupational noise exposure. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant sustained 28 percent binaural hearing loss.<sup>3</sup> The medical adviser averaged appellant's left ear hearing levels of 55, 50, 85 and 85 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 68.75. He then subtracted a 25-dBA decibel fence and multiplied the balance of 43.75 by 1.5 to find 65.625 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right ear hearing levels of 25, 25, 40 and 50 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 35. After subtracting out a 25-dBA fence, he multiplied the remaining 10 balance by 1.5 to calculate a 15 percent right ear monaural hearing loss. The medical adviser then calculated 23.43 percent binaural hearing loss by multiplying the lesser right ear loss of 15 percent by 5, adding the greater 65.625 percent left ear loss and dividing this sum by 6. He added 5 percent for tinnitus for a total of 28.4 percent binaural hearing impairment (23.4 percent + 5 percent for tinnitus) which he rounded down to 28 percent. The medical adviser concluded that hearing aids were authorized and the date of maximum medical improvement as March 13, 2012.

By decision dated April 26, 2012, OWCP accepted appellant's claim for bilateral hearing loss.

On May 24, 2012 appellant filed a claim (Form CA-7) for a schedule award.

By decision dated July 5, 2012, OWCP granted appellant a schedule award for 28 percent binaural hearing loss (23 percent sensorineural + 5 percent tinnitus). The award covered a period of 56 weeks from March 13 to April 8, 2012.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> 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 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* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

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

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<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs 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. 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 evaluating hearing loss.<sup>7</sup>

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.<sup>8</sup> The A.M.A., *Guides* state that if tinnitus interferes with Activities of Daily Living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well being, up to five percent may be added to a measurable binaural hearing impairment.<sup>9</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>10</sup> OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>11</sup>

### ANALYSIS

The issue is whether appellant has more than a 28 percent binaural hearing loss.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Rowin, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on March 13, 2012 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 25, 25, 40 and 50 for the right ear and 55, 50, 85 and 85 for the left ear. Speech reception thresholds were 30 dB on the right and 60 dB on the left, while auditory discrimination scores were 80 percent on the right and 48 percent on the left. Dr. Rowin diagnosed mild to severe sensorineural loss in the right and moderate to profound sensorineural loss in the left. He stated that appellant's asymmetric bilateral neurosensory hearing loss was due to his workplace noise exposure and recommended hearing aids.

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<sup>6</sup> See A.M.A., *Guides* 250.

<sup>7</sup> See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>8</sup> See A.M.A., *Guides* 249.

<sup>9</sup> *Id. R.H.*, Docket No. 10-2139 (issued July 13, 2011); see also *Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>11</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

Applying the March 13, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Rowin calculated that appellant sustained 15 percent monaural hearing impairment in the right ear and 65.6 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 23.4 percent. On the form report, Dr. Rowin added 5 percent impairment for tinnitus, for a total of 28.4 percent binaural hearing impairment (23.4 percent + 5 percent for tinnitus).<sup>12</sup> He listed March 13, 2012 as the date of maximum medical improvement.

OWCP then properly referred the medical evidence to an OWCP medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.<sup>13</sup>

On April 23, 2012 the medical adviser applied the findings of the March 13, 2012 audiogram to calculate 28 percent binaural hearing loss. He averaged appellant's left ear hearing levels of 55, 50, 85 and 85 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 68.75. The medical adviser then subtracted a 25-dBA fence and multiplied the balance of 43.75 by 1.5 to find 65.625 percent left ear monaural hearing loss. He then averaged appellant's right ear hearing levels of 25, 25, 40 and 50 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 35.<sup>14</sup> After subtracting out a 25-dBA fence, the medical adviser multiplied the remaining 10 balance by 1.5 to calculate a 15 percent right ear monaural hearing loss. He then calculated 23.43 percent binaural hearing loss by multiplying the lesser right ear loss of 15 percent by 5, adding the greater 65.625 percent left ear loss and dividing this sum by 6.<sup>15</sup> The medical adviser added 5 percent for tinnitus for a total of 28.4 percent binaural hearing impairment (23.4 percent + 5 percent for tinnitus), which he rounded down to 28 percent. He recommended hearing aids and noted the date of maximum medical improvement as March 13, 2012, concluding that appellant's hearing loss was caused by his occupational noise exposure. The Board finds that the medical adviser properly applied the A.M.A., *Guides* in calculating appellant's impairment rating and OWCP correctly relied on his opinion to find that appellant sustained 28 percent binaural hearing loss.<sup>16</sup> The Board also finds that there is no evidence of greater impairment.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.<sup>17</sup> 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 28 percent by the 200 weeks provided for binaural hearing loss results in a total of 56 weeks of compensation. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.

With respect to the specific period for payment of the 56 weeks of compensation, this is based on the date of maximum medical improvement which occurred on March 13, 2012. The

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<sup>12</sup> *Supra* note 8.

<sup>13</sup> *See Hildred I. Lloyd*, 42 ECAB 944 (1991).

<sup>14</sup> *Supra* note 8.

<sup>15</sup> *Supra* note 6.

<sup>16</sup> *See Linda Beale*, 57 ECAB 429 (2006).

<sup>17</sup> 5 U.S.C. § 8107.

determination of the date for maximum medical improvement ultimately rests with the medical evidence<sup>18</sup> and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.<sup>19</sup> The Board finds that OWCP properly determined the period of the award for 56 weeks from March 13, 2012 to April 8, 2013.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

**CONCLUSION**

The Board finds that appellant did not establish that he sustained greater than 28 percent binaural hearing loss for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>18</sup> *L.H.*, 58 ECAB 561 (2007).

<sup>19</sup> *Mark Holloway*, 55 ECAB 321, 325 (2004).