



## **FACTUAL HISTORY**

On April 25, 2013 appellant, then a 59-year-old plastic worker, filed an occupational disease claim alleging that his federal employment exposed him to hearing hazards that resulted in a slight-to-moderate hearing loss. On June 6, 2013 he alleged that he was exposed to machine noise from band saws, belt sanders, pedestal grinders, pneumatic shears, pneumatic drills, pneumatic arbor sanders, high speed grinders, Ketts saws, pneumatic nibblers, routers, table saws, plainers, jointers, body grinders, pneumatic rivet guns and impact wrenches.

The record contains the results of periodic audiograms conducted at the employing establishment.

On July 26, 2013 OWCP referred appellant to Dr. Barry C. Baron, a Board-certified otolaryngologist, for physical examination and audiometric evaluation. In an August 19, 2013 report, Dr. Baron reviewed an audiogram conducted on his behalf and diagnosed a nonratable high frequency bilateral sensorineural hearing loss and mild bilateral tinnitus. He advised that the nonratable hearing loss was related to appellant's federal employment.

On September 17, 2013 OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

OWCP referred appellant's record to Dr. David N. Schindler, a Board-certified otolaryngologist and medical consultant, who agreed with the diagnosis of bilateral high frequency neurosensory hearing loss, consistent in part with hearing loss due to occupational noise exposure. Dr. Schindler determined that appellant had a zero percent monaural loss in the right ear and a zero percent monaural loss in the left ear, for a zero percent binaural hearing loss according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*). He noted that the results of hearing loss audiometric testing conducted on August 19, 2013 at frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed decibel hearing loss in the right ear of 25, 20, 20 and 25 decibels, respectively; and decibel losses in the left ear of 20, 15, 20 and 30, respectively. Dr. Schindler noted that appellant's tinnitus was mild and not impinging on any activities of daily living, such that it was not rated.

By decision dated January 15, 2014, OWCP denied appellant's claim for a hearing loss.

## **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</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 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating scheduled loss and the Board has concurred in such adoption.<sup>3</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 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.<sup>4</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 and 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>5</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>6</sup>

### ANALYSIS

The Board finds that appellant has not established that he has a ratable impairment due to his accepted hearing loss. OWCP accepted that he sustained a bilateral mild sensorineural hearing loss based on the opinions of Dr. Baron, the second opinion physician, and Dr. Schindler, the medical consultant. The August 19, 2013 audiogram obtained for Dr. Baron listed test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz on the right with decibel losses of 25, 20, 20 and 25, respectively, or a total of 90 decibels. This figure, when divided by four, resulted in an average hearing loss of 22.5 decibels. The average of 22.5 decibels, when reduced by the 25-decibel fence resulted in a zero percent monaural hearing loss in the right ear. With regard to the left ear, test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 15, 20 and 30, or a total of 85 decibels. This figure, when divided by four, results in an average hearing loss of 21.25 decibels. The average of 21.25 decibels, when reduced by the 25-decibel fence results in a zero percent monaural hearing loss in the left ear. As the monaural hearing loss rating was zero for both the left and right ears, the binaural hearing loss was also zero percent.<sup>7</sup>

The issue of whether a hearing loss is ratable for schedule award purposes is a medical determination and may only be resolved by probative medical evidence.<sup>8</sup> The Board finds that OWCP properly based its conclusion on the report of Dr. Baron which established that he did not establish a ratable hearing loss.

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<sup>3</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

<sup>4</sup> *See* A.M.A., *Guides* 250.

<sup>5</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>6</sup> *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).

<sup>7</sup> *See T.W.*, Docket No. 13-1967 (issued February 10, 2014).

<sup>8</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

On appeal, appellant contends that he has tinnitus which affects his hearing on a daily basis. The Board notes that 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>9</sup> A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.<sup>10</sup> As appellant has not established a ratable hearing loss, a schedule award for tinnitus is not appropriate.

Appellant may request a schedule award or increased schedule award based on evidence of 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 has not established that he sustained a ratable hearing loss warranting a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 15, 2014 is affirmed.

Issued: July 7, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *Supra* note 4.

<sup>10</sup> *Supra* note 7.