

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated January 5, 2004, the Board remanded the case to the Office to apply FECA Program Memorandum No. 181¹ to appellant's audiometric results contained in a July 29, 2002 report from Dr. Michael Jaindl, a Board-certified otolaryngologist, who provided a second opinion evaluation for the Office. The Office was to further consider appellant's tinnitus to determine if he was entitled to an increased schedule award for his employment-related hearing loss.² The law and facts as set forth in the previous Board decision are incorporated herein by reference.³

On January 24, 2004 the Office asked a medical adviser to review Dr. Jaindl's July 29, 2002 report to determine if appellant was entitled to an increased schedule award. By reports dated February 16 and 17, 2004, the Office medical adviser again calculated appellant's binaural hearing loss as seven percent, based on Dr. Jaindl's audiometric results, stating that he had reviewed the medical evidence of record and the statement of accepted facts. The Office medical adviser, however, did not provide a calculation for loss of hearing in each ear computed separately. The Office medical adviser further determined that appellant was entitled to an additional 5 percent due to his tinnitus, for a total 12 percent binaural hearing loss.⁴

In a decision dated March 4, 2004, appellant was granted a schedule award for an additional 5 percent impairment, for a total 12 percent impairment for binaural hearing loss. The additional award was for 10 weeks of compensation, to run from November 4, 2002 to January 12, 2003.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁵ and section 10.404 of the implementing federal regulation,⁶ schedule awards are payable for permanent impairment of

¹ FECA Program Memorandum No. 181 (issued November 26, 1974) provides: "On occasion, the allowances for loss of hearing in each ear, if computed separately, may be greater than the combined value of bilateral hearing loss." In such cases, the employee should be given the benefit of the more favorable allowance, as prescribed in the awards for hands and feet in FECA Program Memorandum No. 134. The claimant should be compensated in accordance with the scheduled allowances for the sum of loss of hearing in each ear. See *Jeffrey J. Stickney*, 51 ECAB 616 (2000).

² Docket No. 03-2292 (issued January 5, 2004).

³ The Board notes that the record also contains audiometric results dated February 11 and May 10, 2002. The Office has delineated requirements for the type of medical evidence used in evaluating hearing loss. See Federal (FECA) Procedure Manual, Part 3 -- Requirements for Medical Reports, *Special Conditions*, Chapter 3.600.8(a) (September 1995); *Raymond Van Nett*, 44 ECAB 480 (1993). In the case at hand, the procedural requirements were not met regarding the February 11 and May 10, 2002 audiograms in that the verifications required were not signed by a physician.

⁴ The Board notes that no additional medical evidence was submitted.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates 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* (hereinafter A.M.A., *Guides*),⁷ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁸

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.⁹

ANALYSIS

In the instant, appellant was awarded a 7 percent binaural hearing loss and an additional 5 percent impairment for tinnitus, for a total 12 percent binaural impairment rating. The Board initially finds that the Office properly determined that appellant was entitled to an additional five percent impairment for tinnitus. The A.M.A., *Guides* provides that up to a five percent impairment may be given for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹⁰ In his July 29, 2002 report, Dr. Jaindl advised that appellant’s tinnitus impacted his ability to perform activities of daily living. The Office medical adviser concurred with this. The Office, therefore, properly awarded appellant the maximum allowed, five percent, for tinnitus.¹¹

The Board, however, finds that the Office did not follow the directive of the Board in the January 5, 2004 decision. In February 16 and 17 reports, the Office medical adviser did not apply FECA Program Memorandum No. 181¹² to the audiometric results reported by Dr. Jaindl. The audiometric testing provided by Dr. Jaindl revealed that, after applying the relevant standards

⁷ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁸ See *Joseph Lawrence, Jr.*, *supra* note 7; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁹ *Jeffrey J. Stickney*, *supra* note 1; *Donald A. Larson*, 41 ECAB 947 (1990).

¹⁰ A.M.A., *Guides*, *supra* note 6 at 246.

¹¹ See *Juan A. Trevino*, 54 ECAB ____ (Docket No. 02-1602, issued January 17, 2003).

¹² *Supra* note 1.

and, rounding to whole figures, appellant had a 32 percent monaural hearing loss in his right ear and a 2 percent loss on the left. Calculated separately, appellant's schedule award using the monaural hearing loss figures would equal 17.68 weeks of compensation (32 percent multiplied by 52 weeks plus 2 percent multiplied by 52 weeks) as opposed to 14 weeks of compensation for a 7 percent binaural hearing loss. Following return of the case record, the Office should compensate appellant in accordance with the FECA Program Memorandum.

CONCLUSION

The Board will affirm the decision as modified to reflect that appellant is entitled to an additional compensation based on the application of the FECA Program Memorandum No. 181.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2004 be affirmed, as modified.

Issued: September 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member