

high noise facilities at the employing establishment over the past 29 years. He first became aware of his hearing loss on September 5, 1987.

On February 2, 2010 the Office advised appellant that the evidence submitted was insufficient to support his claim and requested that he submit additional information. It also requested additional information from the employing establishment as to his occupational noise exposure.

Appellant submitted medical records and audiograms dated January 19, 1981 to January 6, 2010. He was exposed to high levels of noise while he worked at the employing establishment as a marine mechanic repairer from February 1981 until August 1985, a boiler plant equipment mechanic from August 1985 until December 2007 and a facilities management specialist from December 2007 to December 2009. Appellant used protective ear wear as required. Prior to his federal employment, he was also exposed to noise when he worked as a boiler operator and at a dry cleaner. Appellant submitted service records and pay rate information from January 24, 1981 through September 27, 2009.

In a statement dated January 7, 2010, appellant listed his employment history, the various noise to which he was exposed and the duration that he was exposed. He first started noticing a slight loss in 1987 and did not previously claim any workers' compensation benefits.

On March 12, 2010 the Office referred appellant to Dr. David S. Hurst, a Board-certified otolaryngologist, for a second opinion examination. The statement of facts, included with the referral, stated that, during his federal employment, he was exposed to submarine equipment, waterfront equipment, power generating equipment, compressors, pumps, fans, tools and vehicles for up to 10 hours per day. Appellant wore earplugs as required.

In an April 23, 2010 report, Dr. Hurst noted that appellant worked at the employing establishment for the past 29 years where he was exposed to noise and wore ear protectors. Appellant suffered from hearing loss for the last 15 years with increased hearing loss during the prior 5 years. Dr. Hurst commented that appellant's tinnitus had increased binaurally over the past five years and that he could benefit from hearing aids. An April 8, 2010 audiogram performed on his behalf showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 20, 20, 15 and 45 decibels for the right ear and 20, 20, 20 and 50 decibels for the left ear. Dr. Hurst compared the audiometric findings with previous audiograms and concluded that appellant sustained a sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. He determined that appellant's workplace exposure, as described, was sufficient as to intensity and duration to have caused hearing loss. Dr. Hurst diagnosed appellant with bilateral noise-induced sensorineural hearing loss causally related to noise exposure encountered during his federal employment and recommended hearing aids.

In a decision dated April 26, 2010, the Office accepted appellant's claim for bilateral sensorineural hearing loss.²

² The Board notes that, while Dr. Hurst recommended hearing aids for appellant's binaural hearing loss, the record does not indicate that appellant submitted a claim for hearing aids.

On April 26, 2010 an Office medical adviser reviewed Dr. Hurst's report and determined that the audiograms were consistent with the pattern of noise-induced hearing loss. He agreed that appellant's hearing loss was pathognomonic of noise-induced sensorineural hearing loss and was due, in part or all, to noise exposure encountered during federal employment. Using the April 8, 2010 audiogram, the medical adviser determined that appellant had 0 percent monaural hearing loss in the right ear, 5.6 percent monaural hearing loss in the left ear or 0.6 percent binaural hearing loss. He also noted the date of maximum improvement as April 8, 2010. The Office medical adviser cited Table 11-1 and Table 11-2 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as a basis for the rating.

On May 3, 2010 appellant submitted the Form CA-7.

By decision dated June 24, 2010, the Office granted appellant a schedule award for 5.6 percent monaural hearing loss to his left ear. The period of the award ran April 8 through 29, 2010.

LEGAL PRECEDENT

The schedule award provision of the Act³ 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice under the law, 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 the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

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 a 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.⁵ The Board has also noted the Office's policy to round the calculated percentage of impairment to the nearest whole number.⁶

³ 5 U.S.C. §§ 8101-8193.

⁴ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Litchenberger*, 52 ECAB 462 (2001).

⁶ *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).

ANALYSIS

On January 21, 2010 appellant filed a claim for hearing loss and the Office referred him to Dr. Hurst for a second opinion evaluation. On April 8, 2010 Dr. Hurst obtained an audiogram performed on his behalf. In an April 23, 2010 report, he determined that appellant's hearing loss was a result of workplace noise exposure and recommended hearing aids.

The Office medical adviser reviewed Dr. Hurst's report and determined that appellant sustained 0 percent monaural hearing loss in the right ear and 5.6 percent monaural hearing loss to the left ear. He noted that appellant had 0.6 percent binaural hearing loss. On June 24, 2010 the Office granted appellant a schedule award for 5.6 percent monaural hearing loss in the left ear, instead of 0.6 percent binaural hearing loss as the monaural loss allowed for additional days of compensation. The Board notes that the Office did not properly calculate the extent of appellant's hearing loss.

The April 8, 2010 audiogram recorded the frequency levels at 500, 1,000, 2,000 and 3,000 Hz for the right ear reveal decibel losses of 20, 20, 15 and 45 or a total of 100 decibels. The average of this figure is 25 decibels. This average was then reduced by 25 decibels to 0, which was multiplied by the established factor of 1.5 to result in a zero percent impairment in the right ear. The calculation of the monaural hearing loss of appellant's right ear was proper. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 20, 20 and 50 or a total loss of 110 decibels. The average of this figure is 27.5. This average is then reduced by 25 decibels to 2.5, which is multiplied by the established factor of 1.5 to result in 3.75 decibel impairment or 3.75 percent monaural hearing loss for the left ear, which is rounded up to 4 percent, not 5.6 percent as determined by the medical adviser. The error in the calculation by the Office medical adviser occurred because he misread Table 11-1. Instead of the rating for 110 decibel loss, appellant's hearing loss was rated at a 115 decibel loss, which is 5.6 percent.⁷ The application of the formula, as well as the rating provided by Table 11-1 results in four percent left ear hearing loss impairment.

When calculating binaural hearing loss, the lesser hearing loss percentage, 0 percent for the right ear, is multiplied by 5, then added to the greater loss percentage of 3.75 percent and divided by 6, which results in a binaural hearing loss of .63 percent. Rounded to the nearest whole number, appellant would have a one percent binaural hearing loss.

Under the Act, the maximum award for binaural hearing loss is 200 weeks of compensation. In this case, appellant would be entitled to one percent of 200 weeks or 2 weeks of compensation. It is well established, however, that, if calculations based on the monaural hearing loss result in greater compensation, then the monaural hearing loss calculation should be used.⁸ The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks. The Board finds that the hearing loss in appellant's left ear should be rounded to four percent, the

⁷ The Board notes that Table 11-1 of the sixth edition of the A.M.A., *Guides* provides ratings pursuant to the formula described.

⁸ *E.S.*, *supra* note 4; *J.H.*, 59 ECAB 377 (2008).

nearest whole number.⁹ Four percent of 52 weeks equals 2.1 weeks of compensation. The Office therefore properly granted the award for monaural loss. The Board finds that appellant sustained four percent monaural hearing loss in his left ear. Appellant has not established that he has more than the 5.6 percent left ear hearing loss, for which he received a schedule award.

On appeal, appellant alleges that his hearing loss has lasted for years and he should be compensated for a more than several weeks of impairment. As noted, compensation for a monaural hearing loss is limited to a maximum of 52 weeks, pursuant to the Act. This maximum is then prorated based on the percentage of hearing loss sustained. Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified.¹⁰ The provisions for schedule awards are separate from any factors that determine disability for wage loss.¹¹

Appellant also contends that he has tinnitus associated with his hearing loss. Dr. Hurst documented tinnitus. The A.M.A., *Guides* allow for compensation up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹² There is no medical evidence of record, however, establishing that appellant's tinnitus impacts his ability to perform the activities of daily living.

Appellant failed to establish that he is entitled to more than 5.6 percent hearing loss in his left ear for which he received a schedule award. The June 24, 2010 Office decision will be affirmed as modified.

CONCLUSION

The Board finds that appellant sustained a four percent monaural hearing loss in his left ear and is not entitled to a greater schedule award than granted.

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

¹⁰ See *Denise L. Crouch*, 57 ECAB 161 (2005).

¹¹ *Id.*

¹² *S.G.*, 58 ECAB 383 (2007).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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