

became aware of his condition and its relationship to his employment on January 1, 2000. Appellant did not stop work.

Appellant submitted an undated statement advising that he worked at the employing establishment since May 1993 and was exposed to loud noise due to a variety of job functions. On November 20, 2008 the employing establishment confirmed that appellant had some exposure to noise at work, including weapons training.

A December 24, 1992 audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 5, 0, 0 and 5 for the right ear and 5, -5, 15 and 15 for the left ear. At the same frequency levels, a June 10, 1998 audiogram showed dBA losses of 30, 25, 30 and 40 for the right ear and 20, 20, 35 and 35 for the left ear.

A December 11, 2008 statement of accepted facts noted that appellant's hearing was normal prior to his employment and that he was exposed to occupational noise. An updated April 10, 2009 statement of accepted facts further detailed that he worked for the employing establishment since May 1993 and was exposed to noise generated by refrigeration units, compressors, gunfire, aircraft and various vehicle engines.

OWCP referred appellant for a second opinion examination to Dr. Gregory S. Rowin, an otolaryngologist. In a January 6, 2009 report, Dr. Rowin noted that appellant experienced progressive hearing problems for 10 years and worked in a noisy environment without protection. On examination, he did not observe any physical abnormalities. An audiogram conducted on January 6, 2009 showed dBA losses of 30, 30, 40 and 40 for the right ear and 25, 35, 45 and 45 for the left ear. In view of an atypical pattern, Dr. Rowin diagnosed sloping, mild-to-moderate sensorineural hearing loss "more likely than not secondary to [appellant's] loud noise exposure" and in excess of what would be normally predicated on the basis of presbycusis. He recommended binaural hearing aids and ear protection. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (hereinafter A.M.A., *Guides*) to the January 6, 2009 audiometric data, Dr. Rowin calculated a binaural hearing impairment of 15.62 percent. On the form report, he added five percent impairment for tinnitus, for a total of 20.62 percent total impairment, next to the question asking whether appellant had tinnitus that impacted activities of daily life. Dr. Rowin listed January 6, 2009 as the date of maximum medical improvement.³

In March 4 and May 1, 2009 reports, OWCP's medical adviser agreed with Dr. Rowin's opinion that appellant sustained 16 percent binaural hearing impairment. The medical adviser did not list any impairment due to tinnitus.

By decision dated June 11, 2009, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and authorized hearing aids. On June 14, 2010 it granted a schedule award for 16 percent binaural hearing loss for the period January 6 to August 17, 2009.

² A.M.A., *Guides* (6th ed. 2008).

³ In the original January 6, 2009 report, Dr. Rowin checked the "not due" box in response to a form question asking whether appellant's sensorineural hearing loss was due to occupational noise exposure. OWCP informed him of this incongruity in a May 11, 2009 letter. Dr. Rowin later corrected his mistake in a June 10, 2009 supplemental report.

LEGAL PRECEDENT

FECA's schedule award provision and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁵ However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

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 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA 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. Binaural loss is determined by first 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.⁷

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.⁸

ANALYSIS

Appellant filed a claim for binaural hearing loss and was referred to Dr. Rowin for a second opinion examination. After conducting a thorough examination and reviewing the audiometric data, Dr. Rowin diagnosed bilateral sensorineural hearing loss caused by occupational noise exposure. OWCP calculated that appellant sustained a 16 percent binaural

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(13).

⁶ 20 C.F.R. § 10.404. *See also Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁷ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁸ *Holloway*, *supra* note 6 at 325.

hearing loss and granted a corresponding schedule award for the period January 6 to August 17, 2009.

Appellant argued on appeal that he sustained a binaural hearing impairment rating of 30 to 40 percent. Applying the A.M.A., *Guides* standard to the January 6, 2009 audiogram, his right ear recorded losses of 30, 30, 40 and 40 dBA. The total loss was 140 dBA. When divided by four, the result was an average hearing loss of 35 dBA. The average hearing of 35 dBA was reduced by the fence of 25 dBA to 10 dBA. This figure was then multiplied by the established factor of 1.5, yielding 15 percent monaural impairment of the right ear. At the same frequency levels, appellant's left ear recorded losses of 25, 35, 45 and 45 dBA at 500, 1,000, 2,000 and 3,000 Hz, respectively. The total loss was 150 dBA. When divided by four, the result was an average hearing loss of 37.5 dBA. The average hearing of 37.5 dBA was reduced by the fence of 25 dBA to equal 12.5 dBA. This figure was then multiplied by the established factor of 1.5, yielding 18.75 percent monaural impairment of the left ear. In calculating binaural hearing loss, the lesser monaural loss of 15 percent for the right ear is first multiplied by five to equal 75. This amount is added to the greater monaural loss of 18.75 percent for the left ear to equal 93.75, which is then divided by six to arrive at 15.625 percent binaural hearing loss. This was properly rounded up to 16 percent by OWCP.⁹

The Board notes that Dr. Rowin included 5 percent impairment for tinnitus when he calculated 21 percent binaural hearing impairment. The A.M.A., *Guides* provides that, if tinnitus interferes with activities of daily living such as sleeping, reading and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.¹⁰ While Dr. Rowin included impairment for this condition, he did not address how it interfered with activities of daily living.¹¹ The record does not contain any allegations of tinnitus by appellant. Accordingly, the Board finds that appellant has not established tinnitus as compensable.

Appellant also contends that his schedule award should have commenced in 2000. When loss of use of a scheduled member or function of the body is less than 100 percent, the amount of compensation paid is in proportion to the percentage of loss of use.¹² Under FECA, the maximum award for binaural hearing loss is 200 weeks of compensation. Since appellant's loss was 16 percent, he was entitled to two percent of 200 weeks of compensation, which amounted to 32 weeks of compensation. His schedule award ran from January 6, 2009, the date of maximum medical improvement, through August 17, 2009, which equates to 32 weeks. Regarding the time at which a schedule award begins to run, it is well established that the period commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The determination of whether maximum medical improvement has been reached is based on the medical evidence of record. The date is usually

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (January 2010) (fractions should be rounded down from .49 or up from .50).

¹⁰ A.M.A., *Guides*, *supra* note 2 at 249. See also *R.D.*, 59 ECAB 127, 131 (2007).

¹¹ *J.B.*, Docket No. 10-1987 (issued June 3, 2011); *Horace L. Fuller*, Docket No. 03-771 (issued May 23, 2003) at n.17.

¹² 5 U.S.C. § 8107(c)(19); *D.J.*, 59 ECAB 620 (2008).

the date of the medical examination which determined the extent of the impairment.¹³ Here, the date of such was January 6, 2009. Therefore, OWCP properly determined that appellant was entitled to a schedule award for 16 percent binaural hearing loss for the period January 6 to August 17, 2010.

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

CONCLUSION

The Board finds that appellant failed to establish that he sustained more than 16 percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2010 schedule award decision of Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 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

¹³ See *Richard Larry Enders*, 48 ECAB 184 (1996). See also *P.C.*, 58 ECAB 539 (2007).