

became aware of his hearing loss on December 22, 2009. Appellant included his audiogram record from his employing establishment which listed audiogram examinations dated from August 9, 1976 to December 22, 2009.

On January 7, 2010 OWCP 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 regarding his occupational noise exposure.

In an undated response letter, appellant's supervisor stated that appellant had been an employee for 32 years and had worked on the Mat Plant and Tug Boats for most of his career. Appellant worked eight hours or more a day five days a week and wore hearing protection. His supervisor stated that measured decibels or frequency levels were not available. In another undated response letter, appellant stated that he was employed at the employing establishment as a revetment worker from October 1972 until August 1974, a typing tool repairer from September 1974 until February 2000 and a diesel electric striker from February 2000 until the present. He was exposed to noise for eight hours or more daily and used protective ear wear as required. Appellant listed the types of machinery he worked with to include generators, engines, air compressors, engine-room on towboat, chipper guns, skill saws, table saws, winches, drills and air tools. His supervisor concurred with appellant's response.

Appellant submitted August 9, 1976 and December 22, 2009 audiograms. The August 9, 1976 audiogram showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 20, 15, 25 and 25 decibels for the right ear and 10, 10, 10 and 15 decibels for the left ear. The December 22, 2009 audiogram showed the decibel losses at the same frequencies: 40, 40, 50 and 35 decibels for the right ear and 40, 45, 50 and 55 decibels for the left ear.

In a January 6, 2010 handwritten medical note, Dr. Jerry L. Potts, a Board-certified otolaryngologist, stated that he examined appellant on December 22, 2009. He noted appellant's history of progressive hearing loss and diagnosed mild-to-moderate sensorineural hearing loss in both ears and advised appellant to wear protective earwear whenever he worked around loud noise.

On April 6, 2010 OWCP requested additional information from appellant regarding any nonfederal employment and military service prior to October 2, 1972. In an April 12, 2010 signed personal statement, appellant reported that he was never in the military and did not have a job prior to working at the employing establishment.

On April 16, 2010 OWCP referred appellant to Dr. Bryan M. Clay, a Board-certified otolaryngologist, for a second opinion examination. The statement of facts, included with the referral, stated that, during his employment, appellant was exposed to generators, winches, large and small engines, drills, air tools, air compressors, engine-room on towboat, chipper guns, skill saws and table saws for up to eight hours a day. Appellant wore earplugs as required.

In a June 9, 2010 report, Dr. Clay observed that the earliest provided audiogram demonstrated normal hearing in both ears with the exception of a mild high frequency sensorineural hearing loss in the left ear at 6,000 Hz. An audiogram performed on his behalf

showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz: 20, 35, 40, and 40 decibels for the right ear and 20, 30, 25 and 35 decibels for the left ear. Dr. Clay compared the audiometric findings with previous audiograms and found progression of hearing loss especially in the mid and high frequencies. He diagnosed binaural mild to moderate down sloping sensorineural hearing loss and opined that it was due to over 40 years of noise exposure on a river boat with minimal hearing protection in appellant's earlier and middle years of service.

In a decision dated June 30, 2010, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On July 1, 2010 OWCP's medical adviser reviewed Dr. Clay's report and advised that appellant's claim be returned to Dr. Clay for completion and clarification regarding whether the test results were valid. In a July 9, 2010 report, Dr. Clay and the audiologist indicated that the test results were valid.

On July 26, 2010 OWCP's medical adviser reviewed Dr. Clay's report. Using the June 9, 2010 audiogram, he determined that appellant had 13.13 percent monaural hearing loss in the right ear and 3.75 percent monaural hearing loss in the left ear or 5 percent binaural hearing loss. OWCP's medical adviser also noted the date of maximum improvement as June 9, 2010. He diagnosed bilateral sensorineural hearing loss with a schedule award of five percent and authorized hearing aids.

On August 5, 2010 appellant submitted the Form CA-7.

By decision dated August 11, 2010, OWCP granted appellant a schedule award for five percent binaural hearing loss. The period of the award ran from June 9 through August 17, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) sixth edition 2009, has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

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 decibels is deducted because, as the

² 5 U.S.C. §§ 8101-8193.

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

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 OWCP's adoption of this standard for evaluating hearing loss.⁴ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁵

Office procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores.⁶

ANALYSIS

On January 6, 2010 appellant filed a claim for hearing loss and submitted employing establishment audiograms dating from August 9, 1976 to December 22, 2009 to the record in support of his claim. As these audiograms did not contain the information necessary to establish that they met the calibration protocol outlined in the accreditation manual of the American Speech and Hearing Association, OWCP properly referred appellant to Dr. Clay for a second opinion evaluation. On June 9, 2010 appellant underwent an examination and audiogram. Dr. Clay determined that appellant's hearing loss resulted from noise exposure at his workplace and advised wearing hearing protection.

OWCP's medical adviser reviewed Dr. Clay's report and determined that appellant sustained 13.13 percent monaural hearing loss in the right ear and 3.75 percent monaural hearing loss in the left ear. The decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz: 20, 35, 40 and 40 decibels for the right ear totaled 135; and the left ear losses of 20, 30, 25 and 35 decibels totaled 110. The average loss for the right ear of 33.75 was then reduced by the fence of 25 to equal 8.75 decibels. This amount was then multiplied by 1.5 to equal 13.3 monaural decibel loss of the right ear. The left ear loss was averaged to 27.5 decibels and fence of 25 decibels was subtracted to equal 2.5 decibels. This loss was then multiplied by 1.5 to equal 3.75 decibels, as the left monaural loss. To calculate the binaural loss, the lesser loss of 3.75 decibels was multiplied by 5 to equal 18.75 and was then added to the greater loss of 13.3 to total 32.05, this sum was then divided by 6 to equal the binaural loss of 5.33, which is rounded to five percent. OWCP's medical adviser noted that appellant had five percent binaural hearing loss. The binaural award yields greater compensation as the maximum monaural loss is 52 weeks of compensation, which when multiplied by the monaural loss values only equals 9 weeks of compensation, while the binaural loss equaled 10 weeks of compensation. On August 11, 2010

⁴ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁵ *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). See Federal (FECA) Procedure Manual, Part 3 – Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

⁶ See Federal (FECA) Procedure Manual, Part -- 3 Medical, *Requirements for Medical Reports*, Chapter 3-600.8(a) (4) (March 2010); see also *J.H.*, 59 ECAB 377 (2008).

OWCP granted appellant a schedule award for five percent binaural hearing loss. The Board finds that OWCP's medical adviser properly applied the standards to the findings of the June 9, 2010 audiogram and concluded that appellant had a five percent binaural hearing loss.

Appellant has not established that he has more than the five percent binaural hearing loss, for which he received a schedule award. The August 11, 2010 OWCP decision will be affirmed.

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 permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant sustained a five percent binaural hearing loss and is not entitled to a greater schedule award than granted.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board