



The Office received additional evidence, including a description of appellant's work duties and noise exposures, pay rate information dated December 12, 1983 to June 15, 2003, diagnostic testing results dated August 24, 1987 to December 9, 2003, service records dated June 12, 1990 to October 19, 2003 and a hearing loss questionnaire dated May 22, 2004.

On August 24, 2004 the Office referred appellant, together with a statement of accepted facts, to Dr. Howard Loveless, Jr., Board-certified in otolaryngology, for a second opinion examination.

In a September 27, 2004 report, Dr. Loveless noted that according to the 1983 audiogram appellant had normal hearing prior to his significant noise exposure in his federal employment. He also stated that appellant's current audiogram revealed moderate low frequency sensorineural hearing loss, falling to severe high frequency sensorineural hearing loss and explained that this loss was greater than expected on the basis of presbycusis. Dr. Loveless diagnosed sensorineural hearing loss and concluded that it resulted from noise exposure experienced during appellant's federal employment. He recommended hearing aids, yearly audiograms and a follow-up speech discrimination testing. A September 27, 2004 audiogram performed on Dr. Loveless' behalf recorded the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 45, 50, 60, and 70 for the right ear and 50, 50, 60 and 65 for the left ear.

In an October 20, 2004 medical report, an Office medical adviser reviewed Dr. Loveless' September 27, 2004 otologic examination report and audiogram, applied the Office's formula for determining impairment due to hearing loss and calculated appellant's hearing impairment as follows: average hearing loss in the right ear 56.25 minus a fence of 25 equaled 31.25 multiplied by 1.5 equaled a 46.88 percent hearing loss in appellant's right ear. With regards to appellant's left ear, he calculated the average hearing loss of 56.25 minus a fence of 25 to equal 31.25 multiplied by 1.5 equaled 46.88 percent hearing loss. To determine appellant's bilateral hearing loss, the medical adviser multiplied 46.88 by 5 and added the other 46.88 percent hearing loss and divided the sum by 6 to reach the conclusion that appellant suffered from 46.88 or 47 percent binaural hearing loss. He ultimately diagnosed appellant with bilateral hearing loss with a schedule award of 47 percent and authorized hearing aids.

In a decision dated October 22, 2004, the Office accepted appellant's claim for binaural noise-induced hearing loss.

On October 26, 2004 appellant filed a claim for a schedule award.

In a decision dated March 10, 2010, the Office granted a schedule award for 47 percent binaural loss of hearing. As appellant had previously been paid for 24 percent, the award was for 23 percent.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations set forth the number of weeks of compensation payable to employees

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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. The method used in making such determination is a matter which rests in the sound discretion of the Office. 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*, has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

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 (cps), 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.<sup>3</sup>

### ANALYSIS -- ISSUE 1

In 1998, the Office accepted appellant's claim for 24 percent binaural hearing loss and issued a schedule award for a period of 48 weeks of compensation. On June 17, 2004 appellant filed a claim for additional hearing loss and was referred for a second opinion examination by Dr. Loveless. Audiometric testing performed on his behalf on September 27, 2004 for the recorded frequencies at 500, 1,000, 2,000 and 3,000 cps revealed right ear loss of 45, 50, 60 and 70 decibels and left ear loss of 50, 50, 60 and 65 decibels. Dr. Loveless ultimately diagnosed appellant with sensorineural hearing loss and recommended hearing aids.

An Office medical adviser applied the Office's standards for determining hearing loss to the September 27, 2004 audiogram. Regarding the right ear, the recorded decibel losses of 45, 50, 60 and 70, resulted in a total decibel loss of 225 decibels. When divided by 4, the result was an average hearing loss of 56.25 decibels. The fence of 25 was subtracted from the average to equal 31.25 decibels and multiplied by 1.5 to equal a 46.88 percent hearing loss in the right ear. Regarding the left ear, the recorded decibel losses were 50, 50, 60 and 65 for a total decibel loss of 225. When divided by 4, the result was an average hearing loss of 56.25 decibels. The average loss of 56.25 decibels was then reduced by the fence of 25 to equal 31.25 and multiplied by 1.5, which resulted in a 46.88 percent impairment of the left ear. To calculate appellant's bilateral hearing loss, the right ear loss of 46.88 was multiplied by 5 to equal 234.4 decibels. This amount was then added to the 46.88 left ear hearing loss to total 281.28, which was divided by 6 and resulted in a bilateral hearing loss of 46.88 percent or rounded to 47 percent. The

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<sup>2</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> *E.S.*, 59 ECAB 249 (2007); *Renaldo R. Lichenberger*, 52 ECAB 462 (2001).

Board finds that the Office medical adviser properly applied the standards to the findings of the September 27, 2004 audiogram.

In a decision dated March 10, 2010, the Office awarded appellant a schedule award of 23 percent additional bilateral hearing loss for 46 weeks.<sup>4</sup> It reached the conclusion of 23 percent by subtracting the previous 24 percent hearing loss previously paid from the current 47 percent additional binaural hearing loss. In this case, appellant was awarded 47 percent binaural hearing loss, but the total percentage of loss needed to also include the 24 percent hearing loss and the number of weeks of compensation previously paid. To calculate the number of weeks of compensation the Office properly multiplied the current 47 percent by the 200 weeks provided for binaural hearing loss resulting in a total of 94 weeks of compensation. As appellant already received compensation for 48 weeks in the 1998 schedule award, this amount is subtracted from the 94 weeks to total 46 weeks of compensation. Accordingly, the Office correctly subtracted the 24 percent previously paid from the 47 percent additional hearing loss which resulted in a 23 percent additional binaural hearing loss for 46 weeks.<sup>5</sup> Appellant has not established that he is entitled to a schedule award for greater than 47 percent binaural hearing loss.<sup>6</sup>

### CONCLUSION

The Board finds that appellant is not entitled to a schedule award for greater than 47 percent binaural hearing loss.

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<sup>4</sup> The Board notes that the Office decision appears to contain a typographical error as it states the total bilateral loss as 46 percent, however, the medical adviser recorded a 47 percent additional hearing loss and the decision noted both the previous 24 percent and the additional 23 percent impairment.

<sup>5</sup> See *R.D.*, 59 ECAB 127 (2007).

<sup>6</sup> In its March 10, 2010 decision, the Office also noted that appellant was incorrectly paid from August 15, 2005 through July 16, 2006 in error, which resulted in an overpayment of compensation. Appellant was notified of the overpayment in a preliminary finding issued on March 5, 2010. As no final decision had been issued regarding the overpayment as of the date of this appeal, this issue is not before the Board.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board