

October 23, 2009. Appellant became aware of his condition and its relationship to his employment on November 1, 2005.² Statements and personnel records indicated that he was initially hired by the employing establishment in 1975.

The employing establishment submitted health records, including the results of audiometric testing. A March 3, 1976 audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 15, 15, 5 and 25 for the right ear and 15, 10, 5 and 5 for the left ear. At the same frequency levels, an October 4, 1993 employing establishment audiogram showed dBA losses of 10, 5, 10 and 45 for the right ear and 10, 10, 5 and 15 for the left ear while an October 23, 2009 exhibited dBA losses of 15, 10, 25 and 55 for the right ear and 10, 10, 5 and 50 for the left ear.

In a June 16, 2010 report, an audiologist related that appellant was regularly exposed to noise averaging 75 dBA based on workplace noise surveys. She noted that hearing protection was required in designated areas where noise surpassed 85 dBA. The audiologist concluded that the October 23, 2009 audiogram revealed no impairment.

A June 25, 2010 statement of accepted facts advised that appellant was routinely exposed to noise between 60 and 91 dBA that was generated by turbines, boiler feed pumps, steam leaks, vacuum equipment, trucks and other equipment.

OWCP referred appellant for a second opinion examination to Dr. Joseph A. Motto, a Board-certified otolaryngologist. In a July 14, 2010 report, Dr. Motto noted that appellant was first hired by the employing establishment in 1975. On examination, he observed no physical abnormalities. An audiogram conducted on July 14, 2010 showed dBA losses of 10, 20, 20 and 55 for the right ear and 15, 15, 20 and 60 for the left ear. Dr. Motto opined that, while appellant had a high-frequency hearing impairment prior to his employment, audiometric data suggested that his subsequent hearing loss exceeded what could normally be attributed to presbycusis. He diagnosed bilateral sensorineural hearing loss, concluded that appellant's occupational noise exposure caused the condition and recommended hearing aids.

On August 3, 2010 OWCP's medical adviser agreed with Dr. Motto that appellant's binaural sensorineural hearing loss was caused by occupational noise exposure and authorized hearing aids. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) to the July 14, 2010 audiogram, he calculated that appellant sustained a two percent binaural hearing loss. OWCP's medical adviser listed July 14, 2010 as the date of maximum medical improvement.

By decision dated August 5, 2010, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and authorized hearing aids. On September 2, 2010 it granted a schedule award for two percent binaural hearing loss for the period July 14 to August 10, 2010.

² Appellant filed a previous hearing loss claim in 2002. OWCP did not issue a schedule award in this claim. OWCP File No. xxxxxx114.

³ A.M.A., *Guides* (6th ed. 2008).

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 cycles per second, 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 OWCP developed the matter by referring him to Dr. Motto. After conducting a thorough examination and reviewing the audiometric data, Dr. Motto diagnosed bilateral sensorineural hearing loss causally related to

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.

occupational noise exposure. OWCP's medical adviser concurred with these findings and calculated that appellant sustained a two percent binaural hearing loss.

On appeal, appellant contends that his hearing impairment was more than two percent and asked for another second opinion examination by a different physician. Applying the A.M.A., *Guides* standard to the July 14, 2010 audiogram, his right ear recorded losses of 10, 20, 20 and 55 dBA. The total loss was 105 dBA. When divided by four, the result was an average hearing loss of 26.25 dBA. The average hearing of 26.25 dBA was reduced by the fence of 25 dBA to 1.25 dBA. This figure was then multiplied by the established factor of 1.5, yielding 1.875 percent monaural impairment of the right ear. At the same frequency levels, appellant's left ear recorded losses of 15, 15, 20 and 60 dBA at 500, 1,000, 2,000 and 3,000 Hz, respectively. The total loss was 110 dBA. When divided by four, the result was an average hearing loss of 27.5 dBA. The average hearing of 27.5 dBA was reduced by the fence of 25 dBA to equal 2.5 dBA. This figure was then multiplied by the established factor of 1.5, yielding 3.75 percent monaural impairment of the left ear. In calculating binaural hearing loss, the lesser monaural loss of 1.875 percent for the right ear is first multiplied by five to equal 9.375. This amount is added to the greater monaural loss of 3.75 percent for the left ear to equal 13.125, which is then divided by six to arrive at 2.1875 percent binaural hearing loss. This was properly rounded down to two percent by OWCP.⁹ Accordingly, the Board finds that appellant did not sustain more than a binaural hearing loss of two percent.

Appellant further argues that his schedule award should have commenced several years before July 14, 2010 and he was entitled to hearing devices for future use. 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.¹⁰ Under FECA, the maximum award for binaural hearing loss is 200 weeks of compensation. Since appellant's loss was two percent, he was entitled to two percent of 200 weeks of compensation, which amounted to 4 weeks of compensation. His schedule award ran from July 14, 2010, the date of maximum medical improvement, through August 10, 2010, which equates to four 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 the date of the medical examination which determined the extent of the impairment.¹¹ Here, the date of the examination on which the schedule award was based is Dr. Motto's July 14, 2010 examination. OWCP properly determined that appellant was entitled to a schedule award for two percent binaural hearing loss for the period July 14 to August 10, 2010. The Board notes that appellant is also entitled to appropriate medical benefits, such as hearing aids, from OWCP for his accepted condition.

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 5 U.S.C. § 8107(c)(19).

¹¹ See *supra* note 8; *Richard Larry Enders*, 48 ECAB 184 (1996). See also *P.C.*, 58 ECAB 539 (2007).

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 a two percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2010 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2011
Washington, DC

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

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

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