

FACTUAL HISTORY

On June 21, 2010 appellant, then a 62-year-old coal mine safety and health inspector, filed an occupational disease alleging that he sustained a loss of hearing due to employment-related noise exposure. He stated that he first became aware of his condition in April 2009 and first attributed this condition to his employment at that time. In a letter dated July 2, 2010, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. It allowed 30 days for a response.

Appellant submitted audiological reports and audiograms as well as notice from the employing establishment that he had experienced a standard threshold shift during his periodic physical examination. The employing establishment stated that he was exposed to air-powered roof drills which exceeded the allowable exposure limit for noise as well as continuous mining machines operating at 101 decibels in violation of the permissible noise standard. The employing establishment noted that mine inspectors determined the compliance or noncompliance of noise levels by using a sound level meter or personal noise dosimeters. The employing establishment stated that beginning in 1987 inspectors were provided with earplugs and currently received earmuffs.

OWCP referred appellant for a second opinion evaluation on October 15, 2010. In a report dated November 9, 2010, Dr. A. James Paine, Jr., a Board-certified otolaryngologist, who stated that appellant's current audiometric findings showed a binaural high frequency sensorineural hearing loss slightly worse in the right ear than the left. He opined that appellant's hearing loss was in excess of what would normally be predicted on basis of presbycusis. Dr. Paine stated that the workplace exposure was sufficient to have caused appellant's hearing loss. He diagnosed binaural high frequency sensorineural hearing loss consistent with excessive noise exposure and stated, "The sensorineural hearing loss seen is in part or all in my opinion due to noise exposure encountered in this claimant's federal civilian employment." The audiogram accompanying Dr. Paine's report at testing levels of 500, 1000, 2000 and 3000 hertz revealed in the right ear loss of 25, 35, 40 and 55 decibels, respectively and in the left ear losses of 20, 30, 25 and 55 decibels respectively.

OWCP's medical adviser reviewed this report on November 30, 2010 and applying the appropriate formula determined that appellant had 20.625 percent monaural loss in the right ear and 11.25 percent monaural loss in the left ear for a bilateral loss of hearing of 13 percent.

By decision dated December 3, 2010, OWCP accepted appellant's claim for bilateral loss of hearing and authorized hearing aids. Appellant completed a claim for compensation on December 10, 2010 and requested a schedule award.

By decision dated December 27, 2010, OWCP granted appellant a schedule award for 13 percent binaural loss of hearing.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. FECA, 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 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.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

OWCP 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.¹⁰

ANALYSIS

The Board finds that appellant has no more than 13 percent binaural loss of hearing for which he received a schedule award. Dr. Paine's November 9, 2010 audiogram indicated that

² 5 U.S.C. §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

⁴ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 2.700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. Granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *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).

the losses at the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported, for the right ear losses of 25, 35, 40 and 55 decibels, respectively and in the left ear losses of 20, 30, 25 and 55 decibels. The loss from each ear were averaged and the “fence of 25 decibels” was deducted.¹¹ The remaining amount was multiplied by 1.5 to arrive at the percentage of monaural hearing loss. In the right ear appellant demonstrated a monaural loss of 20.625 percent¹² and in the left ear monaural loss of 11.25 percent.¹³ In order to determine the binaural hearing loss, the loss in each ear is calculated using the above formula. The lesser loss is then multiplied by five and added to the greater loss. This amount ($11.25 \times 5 = 56.25 + 20.625 = 76.875$) is then divided by six to arrive at the total binaural hearing loss (12.8125). According to the accepted formula appellant’s monaural losses combined to reach a 13 percent binaural loss of hearing.

The schedule provisions of FECA specify the number of weeks of compensation to be paid for each permanent impairment listed in the schedule.¹⁴ As appellant has 13 percent loss of use of both ears, he is entitled to 13 percent of the 200 weeks’ of compensation which is 26 weeks. OWCP properly determined the number of weeks of compensation for which he is entitled under the schedule award.

Appellant may request a schedule award or 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 OWCP properly applied the applicable standards of the A.M.A., *Guides* to determine that appellant was entitled to a schedule award for 13 percent binaural loss of hearing due to his employment-related noise exposure.

¹¹ The A.M.A., *Guides* points out that the loss below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions.

¹² For the right ear, the losses were 155 decibels. This was averaged by dividing 155 by 4 totaling 38.75. An amount of 25 decibels was subtracted totaling 13.75. This was multiplied by 1.5 to equal 20.625.

¹³ For the left ear, the losses were 130 decibels. After averaging this loss, the amount was 130 divided by 4 totaling 32.5 decibels. The “fence” was deducted of 25 equals 7.5 decibels. This amount multiplied by 1.5 equals 11.25

¹⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.304(b).

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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