



## **FACTUAL HISTORY**

On June 29, 2009 appellant, then a 61-year-old sheet metal mechanic, filed an occupational disease claim alleging that he sustained tinnitus and noise-induced sensorineural hearing loss due to factors of his federal employment. He indicated that he became aware of his hearing loss on March 19, 2006 and first realized it was caused or aggravated by his federal employment on March 19, 2007.

By letter dated July 9, 2009, OWCP advised appellant of the evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

By letter dated December 10, 2009, OWCP referred appellant and a statement of accepted facts to Dr. Ronald Wright, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Wright performed an otologic evaluation of appellant on January 8, 2010 and audiometric testing was obtained on his behalf on January 6, 2010. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 10, 20, 50 and 55 decibels; left ear 10, 15, 25 and 40 decibels. Dr. Wright determined that appellant sustained mild high-frequency nonsyndromic sensorineural hearing loss (NSHL) due to noise exposure encountered in his federal employment. He did not recommend hearing aids.

By decision dated January 28, 2010, OWCP accepted that appellant sustained bilateral hearing loss due to workplace exposure to noise.

On February 18, 2010 an OWCP medical adviser, Dr. Ronald H. Blum, a Board-certified otolaryngologist, reviewed Dr. Wright's report and the audiometric test of January 6, 2010. The medical adviser concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 13.1 percent monaural hearing loss in the right ear. He noted that the date of maximum medical improvement was January 6, 2010.

On April 19, 2010 appellant filed a claim for a schedule award.

By decision dated October 27, 2010, OWCP granted appellant a schedule award for 13 percent monaural hearing loss of the right ear. The period of the award was from January 6 to February 22, 2010 to last 6.76 weeks.

On November 15, 2010 appellant requested an oral hearing *via* telephone and submitted an audiogram dated November 10, 2011 showing testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following: right ear 10, 15, 55 and 60 decibels; left ear 10, 25 and 50 decibels.

On March 21, 2011 a telephonic hearing was held before an OWCP hearing representative. Appellant testified that his main concern, in addition to his hearing loss, was his tinnitus. He argued that OWCP missed something in its calculation of his compensation. The

hearing representative granted appellant's request to keep the case record open for 30 days for the submission of additional evidence.

By letter dated April 7, 2011, the employing establishment requested that the status of appellant's case be changed to medical payments only "MC" as his schedule award had expired.

Appellant submitted two narrative statements dated April 19 and 23, 2011.

By decision dated June 7, 2011, OWCP's hearing representative affirmed the October 27, 2010 decision on the basis that the evidence submitted was not sufficient to establish a greater than 13 percent monaural hearing loss in appellant's right ear, for which he received a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> 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 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 A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</sup>

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 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 OWCP's adoption of this standard for evaluating hearing loss.<sup>4</sup>

### **ANALYSIS**

OWCP referred appellant to Dr. Wright to determine the extent and degree of any employment-related hearing loss. Dr. Wright evaluated appellant on January 6, 2010 and determined that appellant sustained mild high-frequency NSHL due to noise exposure

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>4</sup> See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

encountered in his federal employment. OWCP's medical adviser, Dr. Blum, reviewed Dr. Wright's report and audiometric findings and properly applied OWCP's standardized procedures in finding that appellant had 13 percent monaural hearing loss impairment in the right ear. The Board finds that the medical report submitted by Dr. Blum conforms to applicable criteria and thus constitutes the weight of the medical evidence. In a report dated October 30, 2009, Dr. Blum noted his review of Dr. Wright's report and audiometric findings. He applied OWCP's standardized procedures to the January 6, 2010 audiogram which recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cycles per second levels and revealed decibel losses of 10, 20, 50 and 55 respectively in the right ear for a total decibel loss of 135 on the right. Dr. Blum then followed established procedures and divided this total by 4 which resulted in an average loss of 33.75 decibels and subtracted the fence of 25 decibels to equal 8.75 decibels. He then multiplied this by the established factor of 1.5 to result in a 13 percent monaural hearing loss for the right ear. Dr. Blum then properly followed the same procedure on the left, noting that the test results for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 25 and 40 decibels respectively, for a total of 90 decibels. He divided this by 4, for an average hearing loss of 22.5 decibels, subtracted the fence of 25 decibels to equal 0 decibels, and multiplied this by the established factor of 1.5, for a zero percent monaural hearing loss for the left ear. The report therefore established that appellant was entitled to a schedule award for a 13 percent monaural hearing loss of the right ear.<sup>5</sup>

OWCP accepted that appellant had monaural hearing loss in the right ear due to his employment. On October 27, 2010 it granted him a schedule award based on a 13 percent permanent impairment of his monaural hearing in the right ear. On November 15, 2010 appellant requested an oral hearing and submitted a November 10, 2011 audiogram. The audiogram revealed an increase in hearing loss in his right ear. The Board has recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relation is supported by the medical evidence of record.<sup>6</sup> However, the record does not contain an accompanying report by a physician providing a rationalized medical opinion on causal relationship. Thus, the Board finds that there is no basis on which to reopen the case for further development or to grant a schedule award for more than a 13 percent monaural hearing loss under OWCP's standardized procedures.<sup>7</sup>

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.<sup>8</sup> With regard to appellant's contention that he was entitled to a schedule award for greater than a 13 percent monaural loss of hearing of the right ear, section

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<sup>5</sup> See *S.G.*, 58 ECAB 383 (2007).

<sup>6</sup> See *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b)(2) (April 1995). If, on the other hand, the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period.

<sup>7</sup> Cf. *Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>8</sup> 5 U.S.C. § 8107.

8107(c)(13)(A) of FECA provides that for a 100 percent loss of hearing in one ear, a claimant is entitled to 52 weeks' compensation,<sup>9</sup> while section 8107(c)(13)(B) provides that, for a 100 percent loss of hearing of both ears, a claimant is entitled to 200 weeks' compensation.<sup>10</sup> As appellant sustained 13 percent monaural hearing loss, he is entitled to 6.76 weeks' compensation, which is what OWCP awarded. He is entitled to no more under FECA.

On appeal appellant contends that OWCP did not address compensation for his tinnitus and requested a referral to a physician for diagnosis and treatment of that condition. Regarding tinnitus, the A.M.A., *Guides* provide that "tinnitus is not a disease but rather a symptom that may be the result of disease or injury."<sup>11</sup> The A.M.A., *Guides* state that "if tinnitus interferes with [Activities of Daily Living (ADLs)], including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation, and emotional well being, up to five percent may be added to a measurable binaural hearing impairment."<sup>12</sup> OWCP did not accept appellant's tinnitus condition. Neither Dr. Wright nor Dr. Blum diagnosed tinnitus, nor did they provide rationalized medical opinion evidence to establish that it interfered with appellant's ADLs. Thus, appellant has not met his burden of proof to establish that he had a ratable hearing loss entitling him to a schedule award with regard to the tinnitus.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has no more than a 13 percent monaural hearing loss in the right ear for which he received a schedule award.

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<sup>9</sup> *Id.* at § 8107(c)(13)(A).

<sup>10</sup> *Id.* at § 8107(c)(13)(B).

<sup>11</sup> A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009).

<sup>12</sup> *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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