

ear. He explained that during an inspection he asked the driver to blow the horn, which was at ear level, resulting in pain in his ears. Appellant noticed liquid with small trace of blood coming out of his right ear about 20 minutes later.

On January 11, 2011 OWCP accepted appellant's claim for bilateral hearing loss. On February 4, 2011 appellant filed a schedule award claim for hearing loss.

Appellant was referred for a second opinion examination to Dr. Gregory S. Rowin, a Board-certified otolaryngologist, along with a statement of accepted facts. In a February 10, 2011 second opinion report, Dr. Rowin noted appellant's complaints of chronic hearing loss. Appellant related that his hearing loss started about a year ago when he experienced loud noise exposure next to his right ear. Although he received medical treatment, his hearing never returned and continued to deteriorate. Upon examination, Dr. Rowin observed bilateral neurosensory hearing loss, definitely worse in the right ear, down a four-tone average of about 80 decibels with poor speech discrimination. He diagnosed moderate to severe sensorineural hearing loss in his left ear and severe to profound sensorineural hearing loss in his right ear due to noise exposure in the federal workplace. Dr. Rowin stated "yes" that the present audiometric findings showed a sensorineural loss that was in excess of what would be normally predicted on the basis of presbycusis and that appellant's workplace exposure described in the material provided caused the hearing loss in question.

A February 10, 2011 audiogram showed the decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 80, 80, 90 and 95 decibels for the right ear and 50, 45, 65 and 70 decibels for the left ear respectively. Dr. Rowin determined that the date of maximum medical improvement was February 10, 2011, the date of the audiogram on which the report was based. He also recommended hearing aids.

OWCP forwarded the case record to the district medical adviser (DMA) for review and an opinion as to whether appellant had a ratable permanent impairment due to his accepted hearing loss condition. In a March 4, 2011 report, the DMA reviewed Dr. Rowin's February 10, 2011 second opinion report and concluded that appellant had a 61 percent hearing loss pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). According to the results of the February 10, 2011 audiogram, decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 Hz were 80, 80, 90 and 95 decibels for the right ear (for a total of 345) and 50, 45, 65 and 70 decibels for the left ear (for a total of 230) respectively. The average loss for the right ear was 86.25, which was reduced by the fence of 25 to equal 61.25 decibels. This amount was then multiplied by 1.5 to equal 91.875 decibels, as the right monaural loss. The left ear was averaged to 57.5 decibels, from which the fence of 25 decibels was subtracted to equal 32.5 decibels. This loss was then multiplied by 1.5 to equal 48.75 decibels, as the left monaural loss. To calculate the binaural loss, the lesser loss of 48.75 decibels was multiplied by 5 to equal 243.75 and then added to the greater loss of 91.875 to total 335.62. This sum was then divided by 6, resulting in the binaural loss of 55.93. Since tinnitus impacted appellant's ability to perform activities of daily living, 5 percent was added to total 60.93, which was rounded to 61 percent. The DMA determined that the date of maximum medical improvement was February 10, 2011, the date of the audiogram on which the report was based. He checked "yes" that appellant's hearing loss was made worse by exposure to occupational noise set forth in the statement of accepted facts and recommended hearing aids.

By decision dated April 20, 2011, OWCP awarded appellant a 61 percent schedule award for binaural hearing loss for the period February 10, 2011 to June 12, 2013. The date of maximum medical improvement was noted as February 10, 2011.

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* (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 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

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease but rather a symptom that may be the result of a disease or injury.⁶ The A.M.A., *Guides* state that, if tinnitus interferes with Activities of Daily Living (ADLs), including sleep, reading (and other tasks requiring concentration), enjoying of quiet recreation, and emotional well being, up to five percent may be added to a measurable binaural hearing impairment.⁷

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.

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* A.M.A., *Guides* 249.

⁷ *Id.* *See also* *Robert E. Cullison*, *supra* note 5; *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

ANALYSIS

OWCP accepted appellant's claim for bilateral hearing loss and referred appellant to Dr. Rowin for a second opinion examination. In a February 10, 2011 second opinion report, Dr. Rowin diagnosed moderate-to-severe sensorineural hearing loss in the left ear and severe-to-profound sensorineural hearing loss in his right ear due to noise exposure in the federal workplace. After reviewing Dr. Rowin's February 10, 2011 audiogram and report, the DMA correctly applied OWCP's standardized procedures to the results. Testing for right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 80, 80, 90 and 95 for a total of 345. This total was divided by 4 to obtain the average hearing loss of 86.25, which was reduced by the fence of 25 to equal 61.25 decibels. This amount was then multiplied by 1.5 to equal 91.875 decibels, as the right monaural loss. Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 50, 45, 65 and 70 decibels for the left ear for a total of 230. This total was divided by 4 to obtain the average hearing loss of 57.5 decibels. The fence of 25 decibels was then subtracted to equal 32.5 decibels and multiplied by 1.5 to equal 48.75 decibels, as the left monaural loss. To calculate the binaural loss, the lesser loss of 48.75 decibels was multiplied by 5 to equal 243.75 and then added to the greater loss of 91.875 to total 335.62. This sum was then divided by 6, resulting in the binaural loss of 55.93. Since tinnitus impacted appellant's ability to perform ADLs, 5 percent was added to total 60.93, which was rounded to 61 percent. The Board finds that the medical adviser applied the proper standards to the February 10, 2011 audiogram and correctly determined that appellant had a 61 percent binaural hearing loss. Thus, appellant has not established that he has more than 61 percent binaural hearing loss, for which he received a schedule award.

Appellant is entitled to receive a schedule award for a 61 percent binaural hearing loss. The schedule award provision of FECA specifies the number of weeks of compensation to be paid for each permanent impairment listed in the compensation schedule.⁸ The maximum number of weeks of compensation for loss of hearing in both ears is 200 weeks.⁹ Thus, appellant is entitled to 61 percent of 200 weeks, or 122 weeks of compensation. The Board finds that OWCP properly concluded that the schedule award ran for 122 weeks beginning on February 10, 2011.

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 sustained a 61 percent binaural hearing loss and is not entitled to a greater schedule award than granted.

⁸ 5 U.S.C. § 8107(c).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2011 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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