



as a result of high levels of employment-related noise exposure. He stated that he had a hard time hearing phone conversations and developed ringing in his ears from employment-related noise. Appellant became aware of his condition and of its relationship to his employment on February 6, 2012. He notified his supervisor and first received medical care on that same date.

By letter dated February 29, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

In a February 23 and March 5, 2012 narrative statement, appellant provided a history of his employment and reported that he worked for the employing establishment from August 1996 to the present. He stated that he was exposed to noise from vehicles constantly running, missing mufflers, diesel vehicles, loud engine motors, rail locomotives and jet engines. Hearing protection was not provided. Appellant further stated that he sometimes rode a motorcycle to work, but did not have any hobbies which would cause him hearing loss.

Audiograms dated February 6, March 12 and May 1, 2012 were submitted. In a May 1, 2012 medical report, Dr. Antonio Diaz, Board-certified in family medicine, reported that appellant had a history of work-related noise exposure and vertigo. He noted that hearing loss had been present for five years. Dr. Diaz stated that appellant's hearing loss showed moderate-to-severe sensorineural hearing loss bilaterally with Type A tympanograms. He diagnosed sensorineural hearing loss and vertigo secondary to labyrinthitis.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Gregory S. Rowin, Board-certified in otolaryngology, for a second opinion evaluation. An audiogram was completed on August 29, 2012 which revealed the following decibel (dB) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 50, 50, 55 and 60 for the right ear and 45, 50, 55 and 60 for the left ear. Speech reception thresholds were 50 dB on the right and 50 dB on the left, while auditory discrimination scores were 88 percent on the right and 80 percent on the left. Dr. Rowin reported that appellant complained of hearing problems getting gradually worse, more so in the past year. He diagnosed moderate-to-severe sensorineural hearing loss and stated that the pattern of hearing loss typically required hearing aids. Dr. Rowin opined that appellant's hearing loss was in excess of what would normally be predicated on the basis of presbycusis and that appellant's workplace noise exposure caused his bilateral sensorineural hearing loss.

Applying the standard provided by the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*) to the August 29, 2012 audiometric data, Dr. Rowin calculated that appellant sustained 43.125 percent monaural hearing impairment in the right ear and 41.25 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 41.56 percent. On the form report,

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

Dr. Rowin noted that appellant had tinnitus which interfered with his activities of daily living and therefore added five percent impairment for tinnitus, for a total of 46.56 percent binaural hearing impairment (41.56 percent + 5 percent for tinnitus). He listed August 29, 2012 as the date of maximum medical improvement and recommended hearing aids.

By decision dated September 12, 2012, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On September 12, 2012 OWCP referred the case file to OWCP's medical adviser to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

On September 13, 2012 OWCP's medical adviser reviewed Dr. Rowin's August 29, 2012 otologic examination report and agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant sustained 46.6 percent binaural hearing loss.<sup>3</sup> The medical adviser averaged appellant's left ear hearing levels of 45, 50, 55 and 60 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 52.5. He then subtracted a 25-dB fence and multiplied the balance of 27.5 by 1.5 to find 41.25 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right ear hearing levels of 50, 50, 55 and 60 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 53.75. After subtracting out a 25-dB fence, he multiplied the remaining 28.75 balance by 1.5 to calculate a 43.125 percent right ear monaural hearing loss. The medical adviser then calculated 41.6 percent binaural hearing loss by multiplying the lesser left ear loss of 41.25 percent by 5, adding the greater 43.125 percent right ear loss and dividing this sum by 6. He added 5 percent for tinnitus for a total of 46.6 percent binaural hearing impairment (41.6 percent + 5 percent for tinnitus). The medical adviser concluded that hearing aids were authorized and the date of maximum medical improvement as August 29, 2012.

On October 1, 2012 appellant filed a claim for a schedule award (Form CA-7).

By decision dated November 14, 2012, OWCP granted appellant a schedule award for 41.6 percent binaural hearing loss (41.6 percent sensorineural + 5 percent tinnitus). The award covered a period of 94 weeks from August 29, 2012 to June 17, 2014. Appellant's weekly pay was computed at the 75 percent augmented rate for employees with dependents.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</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

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<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

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>5</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 Hz, the losses at each frequency are added up and averaged. Then, the fence of 25 dB is deducted because, as the A.M.A., *Guides* points out, losses below 25 dB result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>6</sup> 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>7</sup>

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>8</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>9</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>10</sup> It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>11</sup>

### ANALYSIS

The issue is whether appellant has more than a 47 percent binaural hearing loss.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Rowin, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed

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<sup>5</sup> See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>6</sup> See A.M.A., *Guides* 250.

<sup>7</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).

<sup>8</sup> See A.M.A., *Guides* 249.

<sup>9</sup> *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>11</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

on August 29, 2012 which revealed the following dB losses at 500, 1,000, 2,000 and 3,000 Hz: 50, 50, 55 and 60 for the right ear and 45, 50, 55 and 60 for the left ear. Speech reception thresholds were 50 dB on the right and 50 dB on the left, while auditory discrimination scores were 88 percent on the right and 80 percent on the left. Dr. Rowin diagnosed moderate-to-severe bilateral sensorineural loss as a result of appellant's federal workplace noise exposure. He stated that appellant had tinnitus which interfered with his ADLs. Hearing aids were recommended.

Applying the August 29, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Rowin calculated that appellant sustained 43.125 percent monaural hearing impairment in the right ear and 41.25 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 41.56 percent. On the form report, Dr. Rowin added 5 percent impairment for tinnitus, for a total of 46.56 percent binaural hearing impairment (41.56 percent + 5 percent for tinnitus).<sup>12</sup> He listed August 29, 2012 as the date of maximum medical improvement.

OWCP then properly referred the medical evidence to its medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.<sup>13</sup>

On September 13, 2012 OWCP's medical adviser applied the findings of the August 29, 2012 audiogram to calculate 46.6 percent binaural hearing loss.<sup>14</sup> He averaged appellant's left ear hearing levels of 45, 50, 55 and 60 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 52.5. The medical adviser then subtracted a 25-dB fence and multiplied the balance of 27.5 by 1.5 to find 41.25 percent left ear monaural hearing loss. He then averaged appellant's right ear hearing levels of 50, 50, 55 and 60 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 53.75. After subtracting out a 25-dB fence, the medical adviser multiplied the remaining 28.75 balance by 1.5 to calculate a 43.125 percent right ear monaural hearing loss. He then calculated 41.6 percent binaural hearing loss by multiplying the lesser left ear loss of 41.25 percent by 5, adding the greater 43.125 percent right ear loss and dividing this sum by 6. The medical adviser added 5 percent for tinnitus for a total of 46.6 percent binaural hearing impairment (41.6 percent + 5 percent for tinnitus). He recommended hearing aids and noted the date of maximum medical improvement as August 29, 2012, concluding that appellant's hearing loss was caused by his occupational noise exposure. The Board finds that the medical adviser properly applied the A.M.A., *Guides* in calculating appellant's impairment rating and OWCP correctly relied on the medical adviser opinion to find that appellant sustained 46.6 percent binaural hearing loss.<sup>15</sup> The Board notes that OWCP policy is to round the calculated percentage to the nearest whole number.<sup>16</sup> Thus appellant's binaural hearing loss should be rounded to 47 percent. The error in this case is harmless.

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<sup>12</sup> A.M.A., *Guides* 249.

<sup>13</sup> See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

<sup>14</sup> *Id.*

<sup>15</sup> See *Linda Beale*, 57 ECAB 429 (2006).

<sup>16</sup> See *T.H.*, Docket No. 12-764 (issued February 26, 2013).

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.<sup>17</sup> FECA provides that a claimant is entitled to 52 weeks of compensation for a 100 percent loss of hearing in one ear and 200 weeks' compensation for 100 percent hearing loss in both ears. Multiplying 47 percent by the 200 weeks provided for binaural hearing loss results in a total of 94 weeks of compensation, the number of weeks OWCP authorized for payment of appellant's schedule award. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.

In its November 14, 2012 decision, OWCP stated that appellant was entitled to \$17,713.66 in schedule award compensation for the period August 29, 2012 to June 17, 2014. This was based on multiplying appellant's weekly pay rate of \$2,041.08 by the 75 percent augmented compensation rate which totaled \$1,530.81, resulting in a payment of \$6,123.24 every four weeks.<sup>18</sup>

With respect to the specific period for payment of the 94 weeks of compensation, this is based on the date of maximum medical improvement which occurred on August 29, 2012, based upon Dr. Rowin's opinion of August 29, 2012. The determination of the date for maximum medical improvement ultimately rests with the medical evidence,<sup>19</sup> and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.<sup>20</sup> The Board finds that OWCP properly determined the period of the award for 94 weeks from August 29, 2012 to June 17, 2014.

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 appellant did not establish that he sustained greater than 47 percent binaural hearing loss for which he received a schedule award.

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<sup>17</sup> 5 U.S.C. § 8107.

<sup>18</sup> The Board notes that on appeal appellant stated that he should be compensated the full amount based on his hearing loss and complications associated with his hearing loss. The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents, as in this case, as defined in FECA, the employee is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent for a total of 75 percent of monthly pay. 5 U.S.C. § 8110(b). The number of weeks of compensation for a schedule award is determined by the compensation schedule found in section 8107(c) of FECA. 5 U.S.C. § 8107(c); *Dennis R. Stark*, Docket No. 05-1826 (issued January 10, 2006).

<sup>19</sup> *L.H.*, 58 ECAB 561 (2007).

<sup>20</sup> *Mark Holloway*, 55 ECAB 321, 325 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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