



hearing loss and realized that his condition was caused by constant and continuous noise in different work environments since he began working at the employing establishment in April 1995.

In a February 14, 2012 decision, OWCP denied appellant's claim, finding that he did not submit any medical evidence establishing that he sustained a medical condition causally related to the accepted employment-related noise exposure.

On June 27, 2012 appellant requested reconsideration. He submitted an April 3, 2012 audiogram which revealed essentially normal hearing sensitivity in his right ear and mild-to-moderate high frequency sensorineural hearing loss in his left ear.

By letter dated September 14, 2012, OWCP referred appellant, together with a statement of accepted facts, to Dr. Gregory S. Rowin, Board-certified in osteopathy and otolaryngology, for an otologic examination and audiological evaluation. In an October 16, 2012 medical report, Dr. Rowin advised that he examined appellant on October 16, 2012. He set forth findings on examination and diagnosed mild-to-moderate sensorineural hearing loss, which he attributed to noise exposure in appellant's federal employment. Dr. Rowin explained that his hearing loss pattern was consistent with noise exposure. An audiometric test was conducted on the same day as his examination. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Rowin advised that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of the right ear as 25, 20, 25 and 30, respectively. He averaged the losses to determine that appellant had an average hearing loss of 25 decibels. Dr. Rowin then subtracted the fence of 25 decibels and multiplied the balance by 1.5, resulting in a zero percent right ear monaural hearing loss. Testing at the same frequency levels noted above revealed decibel losses of 25, 25, 25 and 40, respectively, regarding the left ear. Dr. Rowin averaged the losses to obtain an average loss of 28.75 decibels. After subtracting a fence of 25 decibels, he multiplied the remaining balance by 1.5 to calculate a 5.625 percent left ear monaural hearing loss. Dr. Rowin then calculated 5.93 percent binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the greater 5.625 percent left ear loss and dividing this sum by 6. He added 5 percent for tinnitus for a total of 5.93 percent binaural hearing impairment (.93 percent + 5 percent for tinnitus). Dr. Rowin concluded that the date of maximum medical improvement was the date of his examination and recommended hearing protection in noise and binaural hearing aids.

On November 15, 2012 an OWCP medical adviser reviewed Dr. Rowin's October 16, 2012 otologic examination report and agreed that appellant's binaural 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 six percent binaural hearing loss. The medical adviser stated that the date of maximum medical improvement was October 16, 2012, the date of Dr. Rowin's examination. He authorized hearing aids.

In a November 20, 2012 decision, OWCP set aside the February 14, 2012 decision and accepted appellant's claim for bilateral hearing loss based on Dr. Rowin's October 16, 2012 report. It recommended that he file a Form CA-7 to receive a schedule award for his six percent binaural permanent hearing impairment.

On November 21, 2012 appellant filed a Form CA-7.

In a February 8, 2013 decision, OWCP granted appellant a schedule award for six percent binaural hearing loss for the period October 16, 2012 to January 7, 2013.

### **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 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 under the law, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>3</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>4</sup>

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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>5</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

standard for evaluating hearing loss.<sup>10</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>11</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>12</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>13</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its 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>14</sup>

### ANALYSIS

OWCP referred appellant, together with a statement of accepted facts, to Dr. Rowin, a Board-certified otolaryngologist, for a second opinion evaluation to determine the extent and degree of any employment-related hearing loss. An audiogram was completed on October 16, 2012 which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz, 25, 20, 25 and 30, respectively, for the right ear and 25, 25, 25 and 40, respectively, for the left ear. Dr. Rowin diagnosed mild-to-moderate 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 October 16, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Rowin calculated that appellant had 0 percent monaural hearing impairment in the right ear and 5.93 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of .93 percent. On the form report, Dr. Rowin added 5 percent impairment for tinnitus, for a total of 5.93 percent binaural hearing impairment (.93 percent + 5 percent for tinnitus).<sup>15</sup> He listed October 16, 2012 as the date of maximum medical improvement.

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<sup>10</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>11</sup> *J.H.*, *supra* note 10; *J.Q.*, 59 ECAB 366 (2008); *Robert E. Cullison*, 55 ECAB 570 (2004). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (January 2010).

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

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

<sup>14</sup> See *G.M.*, Docket No. 11-1295 (issued January 25, 2012); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006); *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>15</sup> A.M.A., *Guides* 249.

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>16</sup>

On November 15, 2012 OWCP's medical adviser reviewed the otologic and audiologic testing performed on appellant on October 16, 2012<sup>17</sup> and properly applied the applicable standards of the A.M.A., *Guides*, to concur in the finding of 5.93 percent binaural hearing loss, which he rounded off to determine that appellant had 6 percent binaural hearing loss.<sup>18</sup> The case record does not contain any other medical evidence that supports a greater percentage of impairment in conformance with the A.M.A., *Guides*.

The Board finds that Dr. Rowin's impairment rating, as reviewed by OWCP's medical adviser, was thorough, detailed and properly applied the appropriate portions of the A.M.A., *Guides*. The Board finds, therefore, that OWCP properly determined that appellant has no more than six percent binaural hearing loss, for which he has received a 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 appellant has failed to establish that he has more than a six percent binaural (both ears) hearing loss for which he received a schedule award.

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<sup>16</sup> See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

<sup>17</sup> *Id.*

<sup>18</sup> See cases cited, *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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