

FACTUAL HISTORY

On August 6, 2011 appellant, then a 46-year-old officer, filed an occupational disease claim (Form CA-2) alleging that she sustained hearing loss in both ears due to factors of her federal employment. By decision dated September 25, 2012, OWCP accepted the claim for bilateral hearing loss due to noise and tinnitus.

On September 7, 2012 appellant filed a claim for a schedule award.

OWCP referred appellant and a statement of accepted facts to Dr. Gregory S. Rowin, an otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Rowin performed an otologic evaluation of appellant on September 6, 2012 and audiometric testing was obtained on his behalf. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 30, 25, 30 and 30 decibels; left ear 30, 25, 25 and 25 decibels. Dr. Rowin determined that appellant sustained mild bilateral sensorineural hearing loss due to noise exposure in her federal employment.

On September 19, 2012 an OWCP medical adviser reviewed Dr. Rowin's report and the audiometric test of September 6, 2012. He 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 an eight percent binaural hearing loss. He noted that the date of maximum medical improvement was September 6, 2012.

By decision dated February 11, 2013, OWCP granted appellant a schedule award for eight percent binaural (both) hearing loss. The period of the award was from September 6 to December 26, 2012 to last 16 weeks.

LEGAL PRECEDENT

The schedule award provisions of FECA² provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.⁴

² *Id.* at § 8107; 20 C.F.R. § 10.404.

³ *See Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). *See also* 5 U.S.C. § 8107.

⁴ *See D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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.⁵

ANALYSIS

The Board finds that the medical report submitted by Dr. Rowin conforms to applicable criteria for evaluating hearing loss and thus constitutes the weight of the medical evidence. OWCP's medical adviser reviewed Dr. Rowin's report and audiometric findings to find that appellant had eight percent binaural hearing loss impairment. He properly applied OWCP's standardized procedures to the September 6, 2012 audiogram which recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cycles per second levels. Decibel losses of 30, 25, 30 and 30 in the right ear totaled 115. The figure was divided by 4 resulting in an average loss of 28.8 decibels. From this number was subtracted the fence of 25 decibels to equal 3.8 decibels. This figure was multiplied by the established factor of 1.5 to result in a six percent monaural hearing loss for the right ear. The same calculations were applied to the left. 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 30, 25, 25 and 25 decibels respectively, for a total of 105 decibels. Dividing this by 4, resulted in an average hearing loss of 26.3 decibels, less the fence of 25 decibels to equal 1.3 decibels. Multiplied by the established factor of 1.5, equaled a two percent monaural hearing loss for the left ear. To calculate binaural hearing loss, the 2 percent monaural hearing loss for the left ear was multiplied by 5, as it was the lesser loss, which equaled 10. As the procedures provide, he then added 10 to the 6 percent hearing loss for the right ear, to obtain a total of 16 which was divided by 6 in order to calculate a binaural hearing loss of 3 percent. Five percent was added for appellant's tinnitus impairment, per OWCP procedures, to obtain a total of eight percent.⁶ The record establishes that appellant has an eight percent binaural hearing loss.⁷

Section 8107 of FECA provides for payment of compensation for a specific number of weeks as prescribed by the statute.⁸ With regard to appellant's contention that she was entitled

⁵ 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).

⁶ The A.M.A., *Guides* provide that "if the 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 5 percent may be added to a measurable binaural hearing impairment." See A.M.A., *Guides*, 249. See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

⁷ See *S.G.*, 58 ECAB 383 (2007).

⁸ 5 U.S.C. § 8107.

to a schedule award for greater than an 8 percent binaural loss of hearing, section 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.⁹ Section 8107(c)(13)(B) provides that for a 100 percent loss of hearing of both ears, a claimant is entitled to a maximum of 200 weeks' compensation.¹⁰ As appellant sustained an eight percent binaural hearing loss, she is entitled to 16 weeks of compensation, which is what OWCP awarded.¹¹

On appeal, appellant contends that with 15 years of government service, a schedule award for an eight percent binaural hearing loss is insufficient for her disability compensation. A schedule award is payable for loss or loss of use of those members of the body enumerated under section 8107.¹² Appellant is not entitled to a greater award because of the possible effect of the employment injury on her ability to exercise, play sports or on her chances for advancement in her employment. Impairment of a scheduled member is not proof of a loss of wage-earning capacity.¹³

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 not established that she sustained more than an eight percent binaural (both ears) hearing loss, for which she received a schedule award.

⁹ *Id.* at § 8107(c)(13)(A).

¹⁰ *Id.* at § 8107(c)(13)(B).

¹¹ The Board notes that for a 6 percent right ear hearing loss, appellant is only entitled to (52 weeks x 6 percent) 3.12 weeks of compensation and for her 2 percent left ear hearing loss, appellant is only entitled to (52 weeks x 2 percent) 1.04 weeks of compensation. Thus, appellant is entitled to more compensation for her 8 percent binaural hearing loss (200 weeks x 8 percent = 16 weeks) than she would be for separate awards for her right and left ear loss of hearing (3.12 weeks + 1.04 weeks = 4.16 weeks total).

¹² *See Ann L. Tague*, 49 ECAB 453 (1998).

¹³ *See Ted R. Soares*, 38 ECAB 480 (1987).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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