



loss due to factors of his federal employment. He stated that he had been exposed to loud noises at work, including gunfire. Appellant also noted that he had operated power generators while in the military.

By letter dated February 28, 2012, OWCP requested additional factual and medical evidence from appellant. It afforded him 30 days to submit this additional evidence. OWCP also requested that appellant's employing establishment respond to inquiries regarding his duties.

By letter dated February 21, 2012, appellant stated that he first noticed hearing loss when he was discharged from the Army in 1977 and again before coming to the U.S. Border Patrol in 1986 when he had his full medical examination. He noted that, in 2008 and 2012, he had hearing examinations revealing more significant damage. Appellant also stated that, at present, he did not have any hobbies that would expose him to loud noise.

Appellant submitted the results of an audiogram and tympanogram dated January 3, 2012 from Dr. Tan Nguyen, a Board-certified otolaryngologist. Audiometric testing obtained on that date at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear -- 10, 15, 20 and 45 decibels (dB); left ear -- 10, 15, 10 and 30 dB. Dr. Nguyen did not interpret these results or provide a diagnosis.

By letters dated April 9 and 13, 2012, OWCP referred appellant to Dr. Gregory S. Rowin, a Board-certified otolaryngologist and osteopath, for measurements of his current hearing acuity. With its second opinion referral, it included a statement of accepted facts regarding appellant's federal and nonfederal employment history.

In a second opinion report dated May 3, 2012, Dr. Rowin reviewed appellant's history of exposure to hazardous noise, responded to OWCP's inquiries and performed an otologic evaluation. Audiometric testing obtained by Charles Butler, M.A., on May 2, 2012 at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed the following: right ear -- 20, 20, 20 and 40 dB; left ear -- 30, 35, 35 and 50 dB. Mr. Butler noted that the testing occurred at 10:20 a.m. and that the time of appellant's last exposure to loud noise was at least 16 hours before the examination. He also noted that the audiological equipment had been last calibrated on October 13, 2011. Dr. Rowin determined that appellant sustained mild-to-severe high frequency binaural sensorineural hearing loss. He found that appellant's hearing loss was due to noise exposure in his federal employment, writing that the pattern of his audiogram was consistent with noise exposure and recommended adding five percent to his percentage of impairment due to tinnitus. Dr. Rowin also stated that hearing aids were recommended for appellant.

On June 18, 2012 an OWCP medical adviser reviewed the medical evidence and audiometric testing to determine if appellant's binaural sensorineural hearing loss was ratable for schedule award purposes. The medical adviser concluded that the pure tone audiometry of May 2, 2012 was to be used in calculating his ratable hearing loss as it was the most recent, met all OWCP standards and was an integral part of the evaluation of Dr. Rowin. Using Dr. Rowin's report, the medical adviser calculated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had eight percent ratable binaural hearing loss. The medical adviser further concluded that noise

exposure in the course of his federal employment was sufficient to implicate it as a factor in his hearing loss and that hearing aids were authorized.

By decision dated June 21, 2012, OWCP accepted appellant's claim for bilateral hearing loss due to noise. It also requested that he provide the pay rate in effect on May 2, 2012.

On September 5, 2012 appellant filed a claim for compensation (Form CA-7) for a schedule award on the basis of his accepted claim for bilateral hearing loss due to noise.

On October 1, 2012 appellant provided pay rate information for the period May 2, 2011 to May 2, 2012, indicating that his weekly pay rate was \$966.40. In a payment memorandum dated June 5, 2013, OWCP indicated that his base weekly pay rate was \$1,046.97. In a pay rate memorandum issued on the same day, it indicated that appellant's base weekly pay rate was \$969.83.

By decision dated June 11, 2013, OWCP accepted appellant's claim for a schedule award for eight percent binaural hearing loss. The award ran for 16 weeks from May 2 to August 21, 2012. OWCP based the award on Dr. Rowin's May 2, 2012 report and the June 18, 2012 medical adviser's report and used the pay rate of \$1,046.97 to calculate the total amount of the schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs 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

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *See D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>5</sup> *See supra* note 3; *see F.D.*, Docket No. 09-1346 (issued July 19, 2010).

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

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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>7</sup>

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician which is accepted as definitive by OWCP.<sup>8</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>9</sup> The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living, 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>10</sup>

### ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award for more than eight percent binaural hearing loss. The medical adviser correctly interpreted Dr. Rowin's report in calculating appellant's ratable hearing loss.

Appellant's claim for occupational hearing loss was accepted by OWCP based on the report of Dr. Rowin and an OWCP medical adviser properly applied OWCP's standardized procedures to Dr. Rowin's May 3, 2012 report to arrive at an impairment rating of eight percent. Test results for the frequency levels of 500, 1,000, 2,000 and 3,000 cps on the right revealed decibel losses of 20, 20, 20 and 40 dB respectively, for a total of 100 dB. This figure, when divided by four, results in an average hearing loss of 25 dB. The average of 25 dB, when reduced by the 25 dB fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 35, 35 and 50 dB respectively, for a total loss of 150 dB. One hundred and fifty dB divided by four results in an average of 37.5 dB, which, when reduced by the 25 dB fence and multiplied by 1.5, results in an 18.75 percent monaural hearing loss of the left ear. Multiplying the lesser loss of zero dB by five arrives at a product of zero dB. Adding this figure to the 18.75 percent hearing loss for the right ear obtains a total of 18.75 percent. Dividing this total by six in order to calculate a binaural hearing loss yields 3.125 percent, which

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<sup>7</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>8</sup> *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

<sup>9</sup> See A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009).

<sup>10</sup> *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

was rounded down to 3 percent binaural hearing loss.<sup>11</sup> Adding five percent to appellant's impairment due to tinnitus, as recommended by Dr. Rowin, results in a final figure of eight percent binaural hearing loss. Therefore, the medical adviser correctly interpreted Dr. Rowin's report in calculating appellant's ratable hearing loss.<sup>12</sup>

There was no other medical evidence of record containing audiometric testing and supporting a greater impairment. The results of an audiogram and tympanogram dated January 3, 2012 from Dr. Nguyen at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed the following: right ear -- 10, 15, 20 and 45 dB, for a total of 90 dB; left ear -- 10, 15, 10 and 30 dB, for a total of 65 dB. The results of Dr. Nguyen's audiometric testing would, therefore, support a lesser impairment than the results of Dr. Rowin's testing. Dr. Rowin's report complies with the requirements of the evidence to be used in evaluating occupational hearing loss claims as defined by FECA procedure manual and the medical adviser's report complies with the standards contained in the A.M.A., *Guides*. Therefore, appellant has not established that he has more than an eight percent binaural hearing loss.

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 OWCP followed standardized procedures in evaluating appellant's hearing loss and properly issued a schedule award for eight percent binaural hearing impairment.

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<sup>11</sup> OWCP's procedures provide that in computing binaural hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2)(b) (January 2010).

<sup>12</sup> It is well established that if calculations based on the monaural loss for each ear would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used. *Reynaldo R. Lichtenberger*, 52 ECAB 462, 464 (2001). In this case, appellant's compensation is greater under the procedures used for calculating binaural loss. The maximum number of weeks of compensation for monaural hearing loss is 52 weeks. 5 U.S.C. § 8107(c)(13)(A). Appellant's monaural hearing loss of the left ear is 18.75 percent. The Board finds that the hearing loss in appellant's left ear should be rounded to 19 percent, the nearest whole number. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (January 2010). Nineteen percent of 52 weeks equals 9.88 weeks of compensation. The right ear's ratable monaural loss of zero percent equals zero weeks of compensation. The maximum number of weeks of compensation for binaural hearing loss is 200 weeks. 5 U.S.C. § 8107(c)(13)(B). Appellant's binaural hearing loss is eight percent, accounting for tinnitus. Up to five percent for tinnitus can be added only to a measureable binaural hearing impairment. See A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009). Eight percent of 200 weeks equals 16 weeks of compensation, the amount awarded in this case. Because the calculations for binaural hearing loss result in greater compensation than calculations for monaural hearing loss, OWCP properly used the binaural hearing loss calculation. See *W.Z.*, Docket No. 11-1371 (issued January 6, 2012).

**ORDER**

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

Issued: December 23, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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