



by factors of his federal employment. His work history, employing establishment audiograms and medical records accompanied the claim. Appellant indicated that he had worked for the employing establishment for the past 10 years performing safety inspections on 18 wheelers and passenger motor coaches. He indicated that he became aware of his condition on May 19, 2009. Appellant did not stop work. The employing establishment noted that he continued to be exposed to vehicular noise.

On December 19, 2011 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Gregory S. Rowin, an osteopath and Board-certified otolaryngologist.

In a report dated January 17, 2012, Dr. Rowin described appellant's history of injury and treatment and examined appellant. He noted that audio and tympanograms were performed, which revealed bilateral neurosensory hearing loss down a four tone average of about 40 decibels with fair speech and discrimination. Dr. Rowin diagnosed neurosensory hearing loss with associated tinnitus which was permanent and "more likely than not, secondary to his loud noise exposure." He opined that he did believe that appellant would benefit from a hearing aid evaluation. Dr. Rowin recommended binaural hearing aids and ear protection for noise. He completed a hearing evaluation worksheet and determined that appellant had a 25.62 percent binaural hearing impairment. This was comprised of 20.62 percent binaural hearing loss based on OWCP's standardized formula plus five percent for tinnitus that affected activities of daily living. Dr. Rowin advised that appellant reached maximum medical improvement on that date. An accompanying January 17, 2012 audiogram taken on behalf of his exhibited the following decibel (dBA) losses at 500, 1,000, 2,000, 3,000 Hertz (Hz): 35, 35, 40 and 40 for the left ear; and 45, 35, 55 and 45 for the right ear.

In a January 30, 2012 report, an OWCP medical adviser noted that appellant's chart reflected a sensorineural-type loss and advised that he reached maximum medical improvement on January 17, 2012. He noted the findings in the January 17, 2012 audiogram and indicated that it complied with OWCP's standards. The medical adviser determined that appellant's noise exposure on the job was sufficient to implicate it as a contributing factor to appellant's hearing loss. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009) and determined that appellant had a 26 percent binaural hearing loss. The medical adviser calculated 21 percent binaural loss and an additional five percent loss for tinnitus.

On February 2, 2012 OWCP accepted appellant's claim for bilateral hearing loss due to noise exposure.

On February 6, 2012 appellant requested a schedule award for his hearing loss.

By decision dated May 1, 2012, OWCP granted a schedule award for 26 percent binaural hearing loss. The award covered a period of 52 weeks from January 17, 2012 to January 14, 2013.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.<sup>5</sup> 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</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 cycles per second, the losses at each frequency are added up and averaged. Then, the fence of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA 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. 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>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 (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>10</sup>

OWCP's 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

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> 5 U.S.C. § 8107(c)(13).

<sup>6</sup> *Supra* note 3. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

<sup>7</sup> See A.M.A., *Guides* 250.

<sup>8</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>9</sup> See A.M.A., *Guides* 249.

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

providing rationale for the percentage of impairment specified.<sup>11</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>12</sup>

### ANALYSIS

The evidence supports that appellant sustained 26 percent binaural hearing loss as a result of occupational noise exposure and received a schedule award for the period January 17, 2012 to January 14, 2013.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Rowin, an osteopath, Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on January 17, 2012 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 35, 35, 40 and 40 for the left ear and 45, 35, 55 and 45 for the right ear. Dr. Rowin opined that the hearing loss with associated tinnitus was secondary to noise exposure at his federal employment and recommended hearing aids.

It then properly referred the medical evidence to an OWCP medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.<sup>13</sup> On January 30, 2012 the medical adviser applied the findings of the January 17, 2012 audiogram to calculate 26 percent binaural hearing loss. He averaged appellant's left ear hearing levels of 35, 35, 40 and 40 dBAs at 500, 1000, 2,000 and 3000 Hz, which totaled 150. When divided by four, this averaged 37.5. The medical adviser then subtracted a 25 dBA fence and multiplied the balance of 12.5 by 1.5 to find 18.75 percent left ear monaural hearing loss. He rounded this to 19 percent.<sup>14</sup> The medical adviser then added appellant's right ear hearing levels of 45, 35, 55 and 45 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 180. When divided by four, this averaged 45.<sup>15</sup> After subtracting out a 25 dBA fence, the medical adviser multiplied the remaining 20 balance by 1.5 to calculate a 30 percent right ear monaural hearing loss. He then calculated binaural hearing loss by multiplying the lesser left ear loss of 19 percent by five, adding the greater 30 percent right ear loss and dividing this sum by six.<sup>16</sup> The medical adviser rounded this amount, 20.833 up to 21 percent. He also found impairment due to tinnitus. As the second opinion physician indicated that tinnitus affected activities of daily living, the medical adviser properly added five percent for tinnitus.<sup>17</sup> The Board finds that he properly applied the A.M.A., *Guides* in calculating that appellant sustained 26 percent impairment for binaural hearing loss. The Board finds that there is no evidence of greater impairment.

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<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>12</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

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

<sup>14</sup> Impairment percentages are rounded to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (June 2003).

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

<sup>16</sup> *Id.* at 250.

<sup>17</sup> See *supra* note 9.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.<sup>18</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.<sup>19</sup> Multiplying 26 percent by the 200 weeks provided for binaural hearing loss results in a total of 52 weeks of compensation. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.

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 sustain more than 26 percent permanent binaural hearing loss causally related to his employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 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

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<sup>18</sup> 5 U.S.C. § 8107.

<sup>19</sup> *Id.* at § 8107(c)(13).