

hearing loss as a result of high levels of employment-related noise. He became aware of his condition on March 28, 2005 and of its relationship to his employment on September 16, 2010.

Appellant provided a statement addressing his employment history, noting that he worked for the employing establishment from September 14, 1987 to the present. He stated that he was exposed to a variety of noise in different capacities including noise from traffic, tractor trailers, trains, airplanes and gunfire. Appellant stated that he was provided with earmuffs and earplugs for protection but could only wear the earmuffs because he was unable to hear commands from his officer when wearing both. He further noted that he had tinnitus since the 1980's with three different tones ringing in his ears. Appellant stated that he did not have any other jobs or hobbies which would affect his hearing loss.

In support of his claim, appellant submitted audiograms and hearing conservation data dated September 16, 2010 to February 2, 2011.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Gregory S. Rowin, a doctor of otolaryngology, for a second opinion evaluation. An audiogram was completed on March 22, 2012 which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 40, 40, 55 and 60 for the right ear and 40, 40, 50 and 65 for the left ear. Dr. Rowin diagnosed bilateral high frequency neurosensory hearing loss and associated tinnitus. He stated 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 high frequency neurosensory hearing loss. Dr. Rowin recommended binaural hearing aids and ear protection to be worn when exposed to noise.

Applying the standard provided by the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*) to the March 22, 2012 audiometric data, Dr. Rowin calculated that appellant sustained 35.62 percent monaural hearing impairment in the right ear and 36 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 36 percent. On the form report, Dr. Rowin added five percent impairment for tinnitus, for a total of 41 percent binaural hearing impairment (36 percent + 5 percent for tinnitus). He listed March 22, 2012 as the date of maximum medical improvement and recommended hearing aids.

On May 2, 2012 an OWCP medical adviser reviewed Dr. Rowin's March 22, 2012 otologic examination report and agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure and that he was entitled to a schedule award of 41 percent. The medical adviser concluded that hearing aids were authorized and noted the date of maximum medical improvement as of March 22, 2012.

By decision dated May 15, 2012, OWCP accepted appellant's claim for noise-induced bilateral hearing loss and tinnitus.

On May 21, 2012 appellant filed a claim for a schedule award (Form CA-7). He listed his wife and two sons as dependents.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated October 24, 2012, OWCP granted appellant a schedule award for 41 percent binaural hearing loss (36 percent binaural³ + 5 percent tinnitus). The award covered a period of 82 weeks from March 22, 2012 to October 16, 2013. Appellant's weekly pay was computed at the 75 percent augmented rate for employees with dependents.⁴ The decision also noted that hearing aids had been authorized by OWCP's medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ 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 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

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.⁷ 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.⁸

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.⁹ The A.M.A., *Guides* state that if tinnitus

³ The 35.625 percent binaural hearing loss was rounded up to 36 percent.

⁴ After OWCP rendered its schedule award decision, it issued a letter dated October 25, 2012 which informed appellant that his schedule award ran through October 16, 2013. Appellant was informed that a lump-sum schedule award is computed at a four percent discount rate compounded annually. As of November 18, 2012, OWCP informed him that a lump sum for his schedule award would be \$62,709.78. However, if appellant elected not to receive a lump sum then he would receive the remainder of his schedule award every 28 days until the end of the award on October 16, 2013. He accepted the lump-sum payment on October 30, 2012.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ See A.M.A., *Guides* 250.

⁸ 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).

⁹ See A.M.A., *Guides* 249.

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.¹⁰

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.¹¹ OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹²

ANALYSIS

The issue is whether appellant has more than a 41 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 on March 22, 2012 which revealed the following decibels losses at 500, 1,000, 2,000 and 3,000 Hz: 40, 40, 55 and 60 for the right ear and 40, 40, 50 and 65 for the left ear. Speech reception thresholds were 45 decibels bilaterally while auditory discrimination scores were 92 percent bilaterally. Dr. Rowin diagnosed bilateral high frequency neurosensory hearing loss as a result of appellant's federal workplace noise exposure. Hearing aids were recommended.

Applying the March 22, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Rowin calculated that appellant sustained 36 percent monaural hearing impairment in the right ear and 36 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 36 percent. On the form report, Dr. Rowin added 5 percent impairment for tinnitus, for a total of 41 percent binaural hearing impairment (36 percent + 5 percent for tinnitus).¹³ He listed March 22, 2012 as the date of maximum medical improvement.

OWCP 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*.¹⁴

On May 2, 2012 OWCP's medical adviser applied the findings of the March 22, 2012 audiogram to calculate 41 percent binaural hearing loss.¹⁵ He averaged appellant's left ear hearing levels of 40, 40, 50 and 65 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 49. The medical adviser then subtracted a 25-decibel fence and multiplied the balance of 24 by 1.5 to

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

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

¹² See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

¹³ A.M.A., *Guides* 249.

¹⁴ See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹⁵ *Id.*

find 36 percent left ear monaural hearing loss. He then averaged appellant's right ear hearing levels of 40, 40, 55 and 60 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 49. After subtracting out a 25-decibel fence, the medical adviser multiplied the remaining 24 balance by 1.5 to calculate a 36 percent right ear monaural hearing loss. He then calculated 36 percent binaural hearing loss by multiplying the right ear loss of 36 percent by 5, adding the 36 percent left ear loss and dividing this sum by 6.¹⁶ The medical adviser added 5 percent for tinnitus for a total of 41 percent binaural hearing impairment (36 percent + 5 percent for tinnitus). He recommended hearing aids and noted the date of maximum medical improvement as March 22, 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 his opinion to find that appellant sustained 41 percent binaural hearing loss.¹⁷ The Board finds that there is no evidence of greater impairment.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.¹⁸ 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. OWCP used a 41 percent binaural hearing loss impairment rating, rounded up from 40.6 percent. Multiplying 41 percent by the 200 weeks provided for binaural hearing loss results in a total of 82 weeks of compensation. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.¹⁹

On appeal, appellant argued that he would like the remaining 25 percent of his schedule award. The Board notes that 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,²⁰ 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.²¹ Thus, OWCP properly calculated appellant's weekly pay rate at \$1,321.85 by multiplying his weekly compensation of \$1,762.46 by the 75 percent augmented compensation rate. Appellant is not entitled to an additional 25 percent.

With respect to the specific period for payment of the 82 weeks of compensation, this is based on the date of maximum medical improvement which occurred on March 22, 2012. The determination of the date for maximum medical improvement ultimately rests with the medical

¹⁶ *Supra* note 4.

¹⁷ *See Linda Beale*, 57 ECAB 429 (2006).

¹⁸ 5 U.S.C. § 8107.

¹⁹ 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).

²⁰ For the purposes of that section, dependent means a wife, husband, an unmarried child or a parent under specific circumstances. 5 U.S.C. § 8110.

²¹ *Id.* at § 8110(b).

evidence²² and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.²³ The Board finds that OWCP properly determined the period of the award for 82 weeks from March 22, 2012 to October 16, 2013.²⁴

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 41 percent binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 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

²² *L.H.*, 58 ECAB 561 (2007).

²³ *Mark Holloway*, 55 ECAB 321, 325 (2004).

²⁴ The Board notes that, as of November 18, 2012, appellant elected to receive a lump-sum payment of his schedule award in the amount of \$62,709.78.