

employment-related noise exposure. He became aware of his condition and of its relationship to his employment on December 20, 1988. Appellant notified his supervisor on July 26, 2012. On June 6, 2012 he filed a claim for a schedule award (Form CA-7).

By letter dated August 8, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

In an undated narrative statement, appellant provided a history of his employment and reported that he worked for the Air Force from 1978 to January 2010. From 1978 to 2006, he was exposed to a variety of noises including various pneumatic tool grinders, welding machines, saws, sewer jet equipment, augers, fire trucks, chippers, grinders, deck crawlers, hammering, gouging and sanding. Appellant most recently worked as a Maintenance Mechanic Supervisor from 2006 to January 2010 where he was exposed to noise from F-16 aircrafts for eight hours a day. He was provided with earplugs and was last exposed to the employment-related noise in January 2010. Appellant's hobbies included hunting approximately one to two times a year and hearing protection was utilized.

Audiograms and hearing conservation data were submitted dated February 8, 1977 to December 7, 1999.

OWCP referred appellant, together with a statement of accepted facts, to Dr. William R. Lomax, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on November 26, 2012 which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 40, 45, 60 and 55 for the right ear and 40, 50, 65 and 65 for the left ear. Speech reception thresholds were 50 decibels on the right and 50 decibels on the left, while auditory discrimination scores were 84 percent on the right and 88 percent on the left. Dr. Lomax reported that appellant complained of tinnitus and hearing problems getting worse over the years. He diagnosed bilateral neurosensory hearing loss and noted that appellant's subjective tinnitus was secondary to the hearing loss. Dr. Lomax 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 neurosensory hearing loss.

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 November 26, 2012 audiometric data, Dr. Lomax calculated that appellant sustained 38 percent monaural hearing impairment in the right ear and 45 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 39 percent. On the form report, he added 5 percent impairment for tinnitus, which impacted the ability to perform activities of daily living, for a total of 44 percent binaural hearing impairment (39 percent + 5 percent for tinnitus).

² A.M.A., *Guides* (6th ed. 2009).

Dr. Lomax listed November 26, 2012 as the date of maximum medical improvement and recommended hearing aids.

On December 19, 2012 OWCP referred the case file to an OWCP medical adviser to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

On December 20, 2012 an OWCP medical adviser reviewed Dr. Lomax's November 26, 2012 otologic examination report and agreed that appellant's bilateral sensorineural 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* to determine that appellant sustained 39 percent binaural hearing loss.³ The medical adviser averaged appellant's left ear hearing levels of 40, 50, 65 and 65 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 55. He then subtracted a 25-decibel fence and multiplied the balance of 30 by 1.5 to find 45 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right ear hearing levels of 40, 45, 60 and 55 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 50. After subtracting out a 25-decibel fence, he multiplied the remaining 25 balance by 1.5 to calculate a 37.5 percent right ear monaural hearing loss. The medical adviser then calculated 39 percent binaural hearing loss by multiplying the lesser right ear loss of 37.5 percent by 5, adding the greater 45 percent left ear loss and dividing this sum by 6. No percentage was added for tinnitus. The medical adviser concurred with Dr. Lomax that the date of maximum medical improvement was November 26, 2012 and concluded that hearing aids were authorized.

By decision dated December 21, 2012, OWCP accepted appellant's claim for bilateral hearing loss.

By decision dated March 13, 2013, OWCP granted appellant a schedule award for 39 percent binaural hearing loss. The award covered a period of 78 weeks from November 26, 2012 to May 25, 2014.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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.⁵

³ *Id.*

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

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 Hz, 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.⁶ 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.⁷

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.⁸ 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.⁹

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.¹⁰ OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹¹

ANALYSIS

OWCP accepted appellant's claim for bilateral noise-induced hearing loss. The issue is whether appellant has more than a 39 percent binaural hearing loss for which he received a schedule award. The Board finds that the evidence of record establishes that appellant has a 44 percent binaural hearing loss.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Lomax, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on November 26, 2012 which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 40, 45, 60 and 55 for the right ear and 40, 50, 65 and 65 for the left ear. Speech reception thresholds were 50 decibel on the right and 50 decibel on the left, while auditory

⁶ See A.M.A., *Guides* 250.

⁷ 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).

⁸ See A.M.A., *Guides* 249.

⁹ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹¹ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

discrimination scores were 84 percent on the right and 88 percent on the left. Dr. Lomax reported that appellant complained of years of hearing loss and tinnitus. He diagnosed bilateral neurosensory hearing loss and tinnitus, noting that appellant's subjective tinnitus was secondary to the hearing loss. Dr. Lomax opined that appellant's workplace noise exposure caused his bilateral neurosensory hearing loss.

Applying the November 26, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Lomax calculated that appellant sustained 38 percent monaural hearing impairment in the right ear and 45 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 39 percent and added 5 percent for tinnitus, for a total of 44 percent binaural hearing impairment (39 percent + 5 percent for tinnitus).¹² Dr. Lomax listed November 26, 2012 as the date of maximum medical improvement and recommended hearing aids.

OWCP then referred the medical evidence to an OWCP medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.¹³ The medical adviser opined that appellant had a 39 percent binaural hearing loss under the sixth edition of the A.M.A., *Guides* based on the results of the November 26, 2012 audiogram and Dr. Lomax's second opinion report. The medical adviser did not offer any opinion on appellant's diagnosed tinnitus.

The Board finds that Dr. Lomax, the second opinion physician properly evaluated appellant's hearing loss. Using the November 26, 2012 audiogram to calculate appellant's hearing loss in accordance with the A.M.A. *Guides*, Dr. Lomax averaged appellant's left ear hearing levels of 40, 50, 65 and 65 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 55. He then subtracted a 25-decibel fence and multiplied the balance of 30 by 1.5 to find 45 percent left ear monaural hearing loss. Appellant's right ear hearing levels of 40, 45, 60 and 55 decibels at 500, 1,000, 2,000 and 3,000 Hz, were then averaged to total 50. After subtracting out a 25-decibel fence, he multiplied the remaining 25 balance by 1.5 to calculate a 37.5 percent right ear monaural hearing loss. He then calculated 39 percent binaural hearing loss by multiplying the lesser right ear loss of 37.5 percent by 5, adding the greater 45 percent left ear loss and dividing this sum by 6.¹⁴ Appellant's tinnitus was allowed another five percent award as it impacted his ability to perform activities of daily living. Dr. Lomax determined that appellant sustained 44 percent binaural hearing loss. The Board finds that he properly evaluated the evidence of record. Dr. Lomax's report is entitled to the weight of the medical evidence.

CONCLUSION

The Board finds that appellant has established that he has a 44 percent permanent bilateral hearing loss.

¹² A.M.A., *Guides* 249.

¹³ See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹⁴ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 23, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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