

noise. He first became aware of his condition and of its relationship to his employment on July 20, 1995. Appellant notified his supervisor on May 11, 2012.

By letter dated May 18, 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 a May 11, 2012 memorandum, the employing establishment concurred with appellant's statements. Audiograms and hearing conservation data were submitted dated November 4, 1985 through December 20, 2010.

In a June 4, 2012 narrative statement, appellant reported that he worked as a painter for Norfolk Naval Shipyard from 1979 to December 2010 when he retired. He noted that he was exposed to noise for 8 to 12 hours a day from various pneumatic tools, chipping, grinding, needle guns, sandblasting, ventilation, blowers, generators and heavy equipment. Appellant stated that he worked 40 to 60 hours per week and used earplugs. He did not have any hobbies or other jobs which would have exposed him to noise.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Eugenia Gray, a Doctor of Otolaryngology, for a second opinion evaluation. An audiogram was completed on December 18, 2012 which revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 25, 25, 30 and 60 for the right ear and 25, 30, 35 and 45 for the left ear. Speech reception thresholds were 20 dBA on the right and 25 dBA on the left while auditory discrimination scores were 96 percent bilaterally. Dr. Gray reported that appellant complained of hearing loss, tinnitus, whooshing sounds, ringing in the ear and difficulty hearing conversation. She diagnosed mild-to-moderate bilateral sensorineural hearing loss and associated tinnitus. Dr. Gray 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 sensorineural 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 December 18, 2012 audiometric data, Dr. Gray calculated that appellant sustained 15 percent monaural hearing impairment in the right ear and 13.125 percent monaural hearing impairment in the left ear. She added 4 percent for tinnitus and calculated a binaural hearing impairment of 17.4375 percent. Dr. Gray listed December 18, 2012 as the date of maximum medical improvement and recommended hearing aids.

By decision dated January 7, 2013, OWCP accepted appellant's claim for noise-induced bilateral sensorineural hearing loss and tinnitus.

² A.M.A., *Guides* (6th ed. 2009).

On January 23, 2013 appellant filed a claim for a schedule award (Form CA-7).

On January 28, 2013 an OWCP medical adviser reviewed Dr. Gray's December 18, 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* and determined that appellant sustained 13.43 percent binaural hearing loss.³ The medical adviser averaged appellant's left ear hearing levels of 25, 30, 35 and 45 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 33.75. He then subtracted a 25-dBA fence and multiplied the balance of 8.75 by 1.5 to find 13.12 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right ear hearing levels of 25, 25, 30 and 60 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 35. After subtracting out a 25-dBA fence, he multiplied the remaining 10 balance by 1.5 to calculate a 15 percent right ear monaural hearing loss. The medical adviser then calculated 13.43 percent binaural hearing loss by multiplying the lesser left ear loss of 13.12 percent by 5, adding the greater 15 percent right ear loss and dividing this sum by 6. In his medical report, he stated that appellant sustained 15 percent monaural loss in the right ear, 13 percent in the left ear and a combined binaural loss of 13.45 percent which included tinnitus. The medical adviser concluded that hearing aids were authorized and the date of maximum medical improvement as December 18, 2012.

By decision dated March 1, 2013, OWCP granted appellant a schedule award for 13 percent binaural hearing loss.⁴ The award covered a period of 26 weeks from December 18, 2012 to February 9, 2013.

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

³ *Id.*

⁴ The Board notes that though the medical adviser calculated an impairment rating of 13.45 percent binaural hearing loss, it is OWCP's policy to round the calculated percentage of impairment to the nearest whole number. *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 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 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.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 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 It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹²

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish his or her claim, OWCP also has a responsibility in the development of the evidence.¹³

ANALYSIS

OWCP accepted appellant's claim for bilateral sensorineural hearing loss. The issue is whether he has more than a 13 percent binaural hearing loss for which he received a schedule award. The Board finds that this case is not in posture for decision. The case will be remanded

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.

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 See *Claudia A. Dixon*, 47 ECAB 168 (1995).

to OWCP for clarification from the medical adviser and further development of the medical evidence as necessary to determine appellant's entitlement to a schedule award.¹⁴

OWCP referred appellant, together with a statement of accepted facts, to Dr. Gray, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on December 18, 2012 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 25, 25, 30 and 60 for the right ear and 25, 30, 35 and 45 for the left ear. Speech reception thresholds were 20 dBA on the right and 25 dBA on the left while auditory discrimination scores were 96 percent bilaterally. Dr. Gray reported that appellant complained of hearing loss, tinnitus, whooshing sounds, ringing in the ear and difficulty hearing conversation. She diagnosed mild-to-moderate bilateral sensorineural hearing loss and opined that appellant's workplace noise exposure caused his hearing loss.

Applying the December 18, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Gray calculated that appellant sustained 15 percent monaural hearing impairment in the right ear and 13.125 percent monaural hearing impairment in the left ear. She added 4 percent impairment for tinnitus and calculated a binaural hearing impairment of 17.4375 percent.¹⁵ Dr. Gray listed December 18, 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*.¹⁶ The medical adviser opined that appellant had a 13.43 percent binaural hearing loss under the sixth edition of the A.M.A., *Guides* based on the results of the December 18, 2012 audiogram and Dr. Gray's second opinion report. OWCP's March 1, 2013 report was based largely on the medical adviser's recommendation. The medical adviser's report, however, is incomplete and insufficiently rationalized to provide a basis for a schedule award.

The Board notes that the medical adviser's calculations and application of the A.M.A., *Guides* produced results that were consistent with Dr. Gray's rating with regard to monaural and binaural hearing loss. Using a Form CA-51 to calculate appellant's hearing loss according to the A.M.A. *Guides* and Dr. Gray's report, the medical adviser averaged appellant's left ear hearing levels of 25, 30, 35 and 45 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 33.75. He then subtracted a 25-dBA fence and multiplied the balance of 8.75 by 1.5 to find 13.12 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right ear hearing levels of 25, 25, 30 and 60 decibels at 500, 1,000, 2,000 and 3,000 Hz, which totaled 35. After subtracting out a 25-dBA fence, he multiplied the remaining 10 balance by 1.5 to calculate a 15 percent right ear monaural hearing loss. The medical adviser then calculated 13.43 percent binaural hearing loss by multiplying the lesser left ear loss of 13.12 percent by 5, adding the greater 15 percent right ear loss and dividing this sum by 6.¹⁷ He stated that hearing aids were authorized and that the date of maximum medical improvement was December 18, 2012. The

¹⁴ A.F., Docket No. 09-2074 (issued May 4, 2010).

¹⁵ A.M.A., *Guides* 249.

¹⁶ See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹⁷ *Supra* note 15.

medical adviser provided a supplemental report with the Form CA-51 and stated that appellant sustained 15 percent monaural loss in the right ear, 13 percent in the left ear and a combined binaural loss of 13.45 percent which included tinnitus. His calculations erroneously omit an additional award for tinnitus despite his report.

The A.M.A., *Guides* allows for compensation of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform ADLs.¹⁸ In this case, Dr. Gray stated that appellant's tinnitus impacted his ability to perform ADLs. 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.¹⁹ The medical adviser stated that the award included tinnitus but failed to include this in his impairment rating. As such, the Board cannot make a proper determination as to the extent of appellant's permanent impairment.

Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.²⁰ Given the deficiency in the medical adviser's report, OWCP should have requested clarification of the percentage of permanent impairment caused by appellant's hearing loss. Accordingly, the Board will remand the case to OWCP for clarification from the medical adviser and further appropriate medical development. Following this and any other further development deemed necessary, OWCP shall issue a merit decision on appellant's schedule award claim.²¹

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁸ See *supra* note 10.

¹⁹ See *supra* note 11.

²⁰ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

²¹ See *P.K.*, Docket No. 08-2551 (issued June 2, 2009); see also *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: September 5, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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