

FACTUAL HISTORY

On July 11, 2012 appellant, then a 58-year-old customs and border protection officer, filed an occupational disease claim alleging that on September 23, 2011 he first became aware that his binaural hearing loss was employment related.

On October 23, 2012 OWCP referred appellant, together with a statement of accepted facts, for a second opinion evaluation by Dr. Gregory S. Rowin, a Board-certified otolaryngologist, who examined appellant on November 20, 2012 and obtained an audiogram. Based on the physical examination and audiogram results, he diagnosed moderate bilateral sensorineural hearing loss due to appellant's federal employment noise exposure. Dr. Rowin recommended hearing aids. An accompanying November 20, 2012 audiogram revealed the following decibel (dBA) losses at 500, 1000, 2000 and 3000 hertz (Hz): 35, 35, 40 and 40 for the right ear and 45, 45, 45 and 45 for the left ear. Applying the standards 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 20, 2012 audiometric date, Dr. Rowin rated an 18.75 percent monaural hearing impairment for the right ear and a 30 percent monaural impairment for the left ear. This resulted in a 20.625 percent binaural hearing impairment. He added 5 percent impairment for tinnitus, for a total of 25.625 binaural hearing impairment (20.625 percent + 5 percent for tinnitus = 26 percent). Dr. Rowin listed November 20, 2012 as the date of maximum medical improvement.

On January 16, 2013 an OWCP medical adviser reviewed Dr. Rowin's otologic examination report and agreed that appellant's bilateral sensorineural hearing loss was due to his 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 a 26 percent binaural hearing loss.³ The medical adviser averaged appellant's left hearing levels of 45, 45, 45 and 45 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 45. He then subtracted a 25 dBA fence and multiplied the balance of 20 by 1.5 to find a 30 percent left ear monaural hearing loss. The medical adviser then averaged appellant's right hearing levels of 35, 35, 40 and 40 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 37.5. He then subtracted a 25 dBA fence and multiplied the balance of 12.5 by 1.5 to find a 19 percent left ear monaural hearing loss.⁴ The medical adviser then calculated a 21 percent binaural hearing loss by multiplying the lesser right ear loss of 19 percent by 5, adding the greater 30 percent left ear loss and dividing this sum by 6.⁵ He added 5 percent for tinnitus for a total 26 percent binaural hearing impairment (21 percent + 5 percent for tinnitus). The medical adviser recommended that hearing aids be authorized and the date of maximum medical improvement as November 20, 2012.

² A.M.A., *Guides* (6th ed. 2009).

³ *Id.*

⁴ The Board notes that the medical adviser rounded this figure up from 18.75 (1.5 x12.5). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (January 2010); *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.Q.*, 59 ECAB 366 (2008).

⁵ See A.M.A., *Guides* 250.

On January 18, 2013 appellant filed a claim for a schedule award.

By decision dated January 23, 2013, OWCP accepted appellant's claim for bilateral hearing loss due to noise.

By decision dated March 7, 2013, OWCP granted appellant a schedule award for a 26 percent binaural hearing loss. The period of the award covered 52 weeks and ran from November 20, 2012 to November 18, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA⁶ and its implementing regulations⁷ 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.⁸ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁹ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹⁰

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹¹ 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.¹² 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.¹³ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁴ 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

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *Supra* note 7; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010). See *P.B.*, Docket No. 10-103 (issued July 23, 2010).

¹¹ A.M.A., *Guides* 250 (6th ed. 2009).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

arrive at the amount of the binaural hearing loss.¹⁵ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁶

ANALYSIS

OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral hearing loss due to noise. By decision dated March 7, 2013, appellant was granted a schedule award for a 26 percent binaural hearing loss. The Board finds that he has not established that he is entitled to more than a 26 percent binaural hearing loss, for which he received a schedule award.

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 November 20, 2012 which revealed the following dBA losses at 500, 1000, 2000 and 3000 Hz: 35, 35, 40 and 40 for the right ear and 45, 45, 45 and 45 for the left ear. Dr. Rowin diagnosed moderate bilateral sensorineural hearing loss due to appellant's federal employment and recommended hearing aids.

Applying the November 20, 2012 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Rowin calculated that appellant sustained an 18.75 percent monaural hearing impairment for the right ear and a 30 percent monaural impairment for the left ear. He calculated that appellant sustained a 25.625 or 26 percent binaural hearing impairment. Dr. Rowin listed November 20, 2012 as the date of maximum medical improvement.

OWCP then properly referred the medical evidence to an OWCP medical adviser, for an impairment rating in accordance with the A.M.A., *Guides*.¹⁷

On January 16, 2013 the medical adviser applied the findings of the November 20, 2012 audiogram to calculate a 26 percent binaural hearing loss. He averaged appellant's left hearing levels of 45, 45, 45 and 45 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 45. The medical adviser then subtracted a 25 dBA fence and multiplied the balance of 20 by 1.5 to find a 30 percent left ear monaural hearing loss. He then averaged appellant's right hearing levels of 35, 35, 40 and 40 dBAs at 500, 1,000, 2,000 and 3,000 Hz, which totaled 37.5. The medical adviser then subtracted a 25 dBA fence and multiplied the balance of 12.5 by 1.5 to find a 19 percent left ear monaural hearing loss. He then calculated a 21 percent binaural hearing loss by multiplying the lesser right ear loss of 19 percent by 5, adding the greater 30 percent left ear loss and dividing this sum by 6.¹⁸ The medical adviser added 5 percent for tinnitus for a total 26 percent binaural hearing impairment (21 percent + 5 percent for tinnitus). He recommended hearing aids and noted the date of maximum medical improvement as November 20, 2012 and that appellant's hearing loss was caused by his occupational noise exposure. The Board finds

¹⁵ *Id.*

¹⁶ *J.H.*, see *supra* note 4; *Thomas O. Bouis*, 57 ECAB 602 (2006); *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted* (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

¹⁷ See *C.K.*, Docket No. 09-237 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁸ *Supra* note 11.

that the medical adviser correctly relied on this opinion to find that appellant sustained a 26 percent binaural hearing loss.¹⁹ The Board also finds that there is no evidence of a greater impairment.

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 has not established that he is entitled to a greater than 26 percent binaural hearing loss, for which he received a schedule award

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 7, 2013 is affirmed.

Issued: September 19, 2013
Washington, DC

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

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

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

¹⁹ See *Linda Beale*, 57 ECAB 429 (2006).