

FACTUAL HISTORY

On July 11, 2012 appellant, a 56-year-old customs and border protection officer, filed an occupational disease claim alleging hearing loss as a result of his federal employment. The employing establishment confirmed that he was exposed to noise at various firing ranges and from semi-tractors, rail traffic, vehicle traffic, airplane engines and ship engines.

Appellant advised that he received a schedule award for a 43 percent binaural hearing loss under a prior claim.²

OWCP referred appellant, together with a statement of accepted facts, to Dr. James T. Wright, Jr., a Board-certified otolaryngologist, for evaluation.

On September 5, 2012 audiometric testing at 500, 1,000, 2,000 and 3,000 cycles per second revealed hearing thresholds of 70, 70, 75 and 95 decibels in the right ear and 65, 70, 70 and 75 decibels in the left. Test results were determined to be valid and representative of appellant's hearing sensitivity. Dr. Wright diagnosed moderately severe to profound sensorineural hearing loss in both ears. He stated that this was due at least in part to noise exposure encountered in federal employment. Completing OWCP's hearing evaluation form, Dr. Wright noted that appellant had an average hearing threshold of 77.5 decibels in the right ear and 70 decibels in the left, representing monaural impairments of 78.75 and 67.5 percent respectively. Using the formula for binaural impairment, he determined that appellant's binaural impairment was 69.37 percent. Dr. Wright added 5 percent for tinnitus, bringing the total to 74.37 percent.

An OWCP medical adviser reviewed Dr. Wright's calculations and agreed that appellant had a 74 percent binaural hearing loss with tinnitus.

OWCP accepted appellant's claim for bilateral hearing loss due to noise and bilateral tinnitus.

On February 13, 2013 OWCP issued a schedule award for an additional 31 percent binaural hearing loss representing a total binaural loss of 74 percent.

The record indicates that the schedule award was terminated in error after appellant was paid for 164 days. As appellant was still entitled to another 270 days of compensation and as OWCP was making a direct payment for 4 of those days, OWCP issued another schedule award on April 4, 2013 for 19 percent binaural hearing loss for the 266 days of compensation to which he was still entitled.

² File No. xxxxxx190 (injury date September 11, 1988).

LEGAL PRECEDENT

The schedule award provision of FECA³ and the implementing regulations⁴ 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 of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁵

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. OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

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. A “fence” of 25 decibels is then deducted because, as the A.M.A., *Guides* explains, losses below 25 decibels cause no change in the ability to hear everyday sounds under everyday listening conditions. 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.⁸ The Board has concurred in OWCP’s adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

According to audiometry obtained for Dr. Wright, the referral otolaryngologist, appellant’s hearing thresholds were 70, 70, 75 and 95 decibels in the right ear and 65, 70, 70 and 75 decibels in the left.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁶ 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

⁸ A.M.A., *Guides* 250-51 (6th ed. 2009).

⁹ *E.g., M.H.*, Docket No. 10-2269 (issued May 16, 2011).

These total 310 and 280 decibels, respectively, for averages of 77.5 and 70. Subtracting the “fence” of 25 decibels leaves 52.5 and 45 decibels.¹⁰ Multiplying by 1.5 to determine monaural impairment yields percentage losses of 78.75 in the right ear and 67.5 in the left.

To determine binaural hearing loss, the lesser loss, 67.5, is multiplied by 5 and then added to the greater loss, 78.75. The result, 416.25, is divided by 6 for a binaural hearing loss estimate of 69.375 percent.

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.¹¹ Dr. Wright found that tinnitus did interfere with appellant’s activities of daily living and therefore properly increased the final impairment rating to 74.375 percent, which rounds to 74.

As appellant already received compensation for the first 43 percent of his hearing loss under an earlier claim, he may not receive that 43 percent again. For this reason, the Board finds that appellant is entitled to a schedule award for an additional 31 percent binaural hearing loss. Accordingly, the Board will affirm OWCP’s February 13, 2013 decision.

FECA provides a maximum of 200 weeks’ compensation for the complete loss of hearing in both ears.¹² No claimant may receive more. Partial losses are compensated proportionately.¹³ As appellant has an additional binaural hearing loss of 31 percent, he is entitled to 62 weeks of compensation ($200 \times 0.31 = 62$). Converting weeks to days, he is entitled to compensation for 434 days of compensation.

The record indicates that the February 13, 2013 schedule award was terminated in error after 161 days, leaving appellant entitled to another 270 days of compensation. OWCP paid for four days directly. This left appellant entitled to another 266 days of compensation for his increased hearing loss. As 266 days of compensation represents a schedule award of 19 percent ($266 / 1,400 = 0.19$), the Board finds that OWCP properly resumed appellant’s compensation by issuing an additional award for 19 percent on April 4, 2013. Accordingly, the Board will affirm OWCP’s April 4, 2013 decision.

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.

¹⁰ Because appellant’s average hearing thresholds were over 25 decibels, he is considered to have an impairment in the ability to hear everyday sounds under everyday listening conditions, but only to the extent that the averages exceed 25 decibels.

¹¹ A.M.A., *Guides* 249.

¹² 5 U.S.C. § 8107(c)(13)(B).

¹³ *Id.* at § 8107(c)(19).

CONCLUSION

The Board finds that appellant has no more than a 31 percent additional binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the April 4 and February 13, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 11, 2013
Washington, DC

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

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

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