

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**W.J., Appellant** )  
 )  
**and** ) **Docket No. 14-215**  
 ) **Issued: April 17, 2014**  
**DEPARTMENT OF THE AIR FORCE, HILL** )  
**AIR FORCE BASE, UT, Employer** )  
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*Appearances:* *Case Submitted on the Record*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 12, 2013 appellant filed a timely appeal from a June 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish greater than a 10 percent binaural hearing loss, for which he received a schedule award; and (2) whether OWCP used the proper pay rate in calculating appellant's schedule award.

**FACTUAL HISTORY**

On August 2, 2012 appellant, then a 60-year-old informational technology specialist, filed an occupational disease claim (Form CA-2) alleging that noise exposure at work caused

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

bilateral hearing loss. He stated that his hearing loss had been caused by exposure to harmful noise levels while performing duties of his employment as an aircraft sheet metal mechanic. Appellant noted that he had first become aware of his hearing loss and of its relationship to his employment on February 10, 1987. By letters dated October 15, 2012, OWCP requested that the employing establishment furnish information regarding his noise exposure and informed appellant of the evidence needed to support his claim.

A notification of personnel action dated December 16, 1986 shows that appellant's wages as a sheet metal mechanic on that date was \$12.64 per hour. In similar documents dated August 16, 1987 and January 15, 2012, his salaries were listed as \$26,380.00 and \$82,570.00, respectively. Appellant became a production controller on August 16, 1987 and a notification of personnel action from that date shows that his wage before that date remained \$12.64 per hour.

In a note dated May 23, 2012, Dr. Dustin G. Child, Board-certified in family medicine, diagnosed appellant with occupational hearing loss, noting that he had been exposed to aircraft, jet engines and other loud noises from 1973 through 1987.

On August 27, 2012 the employing establishment reviewed appellant's occupational medical records. It noted that he began federal employment in 1973 as an equipment maintenance mechanic, and that he worked in environments producing hazardous noise from that time until August 1987. From that time until the present, appellant worked in an administrative environment with no exposure to hazardous noise. The employing establishment asserted that his additional hearing loss after 1987 could be attributable to external factors such as age and recreational noise exposure. It submitted records of employing establishment hearing examinations dating from 1985 through 1987.

By letter dated October 22, 2012, the employing establishment stated that appellant had not been exposed to hazardous noise since August 16, 1987 and that his pay rate at that time was \$12.64 per hour.

In an undated statement received on October 23, 2012, appellant responded to OWCP's inquiries. He stated that an audiologist had notified him of a significant threshold shift after his annual evaluation in 1987, and that follow-up evaluations had been scheduled to confirm the results. Appellant described his exposure to noise as a sheet metal mechanic and as an equipment maintenance mechanic helper and noted that he had worn hearing protection, but that it did not eliminate damaging levels of exposure. He stated that he had not experienced wage loss or used leave as a result of his condition. According to appellant, the date of last exposure was August 16, 1987.

On January 7, 2013 OWCP referred appellant to Dr. Stewart Barlow, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated February 1, 2013, Dr. Barlow described the examination and diagnosed bilateral high frequency sensorineural hearing loss. He opined that the condition was due to employment-related noise exposure and recommended hearing aids. Dr. Barlow submitted the results of an audiometric examination performed on January 29, 2013, which reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following: right ear 10, 10, 50 and 60

decibels (dBs); left ear 10, 15, 35 and 65 dB, respectively. He did not recommend adding to appellant's binaural hearing impairment for tinnitus affecting activities of daily living.

In a February 15, 2013 report, a district medical adviser reviewed Dr. Barlow's report and audiometric findings and advised that maximum medical improvement had been reached on January 29, 2013. He opined that appellant had employment-related binaural hearing loss and checked a box indicating that hearing aids were authorized. The medical adviser calculated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had 9.7 percent ratable binaural hearing loss.

On February 19, 2013 OWCP accepted that appellant sustained bilateral hearing loss due to noise. On February 28, 2013 appellant filed a claim for a schedule award. In an initial payment memorandum dated June 4, 2013, OWCP noted that the type of pay rate for his schedule award was the date of injury, listed as February 10, 1987, and that the effective consumer price index date was January 29, 2013. By decision dated June 4, 2013, it granted appellant a schedule award for a 10 percent binaural hearing impairment, for a total of 20 weeks of compensation based on a weekly pay rate of \$507.30, noting that the effective date of pay rate was January 29, 2013.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> 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.<sup>4</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday 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

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>5</sup> 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

<sup>6</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has no more than 10 percent binaural hearing loss.

Appellant's claim of occupational hearing loss was accepted by OWCP based on the reports of Dr. Barlow and a district medical adviser. OWCP's standardized procedures were applied to Dr. Barlow's February 1, 2013 report. Test results at the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cps on the left revealed decibel losses of 10, 15, 35 and 65 dBs, respectively, for a total of 125 dBs. This figure, divided by four, results in an average hearing loss of 31.25 dBs. The average of 31.25 dBs, when reduced by the 25-dB fence and multiplied by 1.5, results in a 9.375 percent monaural hearing loss of the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dB losses of 10, 10, 50 and 60 dBs, respectively, for a total loss of 130 dBs. One hundred and thirty dBs divided by four results in an average of 32.5 dBs, which, when reduced by the 25-dB fence and multiplied by 1.5, results in an 11.25 percent monaural hearing loss of the right ear. Multiplying the lesser loss of 9.375 percent by five arrives at a product of 46.875. Adding this figure to the 11.25 percent hearing loss for the right ear obtains a total of 58.125. Dividing this total by six in order to calculate a binaural hearing loss yields a 9.688 percent binaural impairment, which was rounded up to 10 percent in computing the final percentage impairment for award purposes.<sup>8</sup> Therefore, the medical adviser correctly interpreted Dr. Barlow's report in calculating appellant's ratable hearing loss.<sup>9</sup>

There is no other medical evidence of record establishing greater loss under OWCP procedures. The record of audiometric tests performed by the employing establishment prior to January 29, 2013 do not meet the requirements of evidence to be used in evaluating occupational

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<sup>7</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>8</sup> OWCP's procedures provide that in computing binaural hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2)(b) (March 2005).

<sup>9</sup> It is well established that, if calculations based on the monaural loss for each ear would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used. *Reynaldo R. Lichtenberger*, 52 ECAB 462, 464 (2001). In this case, appellant's compensation is greater under the procedures used for calculating binaural loss. The maximum number of weeks of compensation for monaural hearing loss is 52 weeks. 5 U.S.C. § 8107(c)(13)(A). Appellant's monaural hearing loss of the left ear is 9.375 percent. The Board finds that the hearing loss in appellant's left ear should be rounded to nine percent, the nearest whole number. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (January 2010). Nine percent of 52 weeks equals 4.68 weeks of compensation. The right ear's rounded ratable monaural loss of 11 percent equals 5.72 weeks of compensation. The maximum number of weeks of compensation for binaural hearing loss is 200 weeks. 5 U.S.C. § 8107(c)(13)(B). Appellant's binaural hearing loss is 10 percent. Ten percent of 200 weeks equals 20 weeks of compensation, the amount awarded in this case. Because the calculations for binaural hearing loss result in greater compensation than calculations for monaural hearing loss, OWCP properly used the binaural hearing loss calculation. See *W.Z.*, Docket No. 11-1371 (issued January 6, 2012).

hearing loss claims as defined in the Federal (FECA) Procedure Manual, because the reports merely provide the results of each test.<sup>10</sup>

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8107 of FECA provides that compensation for a schedule award shall be based on the employee's monthly pay.<sup>11</sup> For all claims under FECA, compensation is to be based on the pay rate as determined under section 8101(4) which defines monthly pay as:

“The monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater...”<sup>12</sup>

In applying section 8101(4), the statute requires OWCP to determine monthly pay by determining the date of the greater pay rate, based on the date of injury, date of disability, or the date of recurrent disability. The Board has held that rate of pay for schedule award purposes is the highest rate which satisfies the terms of section 8101(4).<sup>13</sup> Where an injury is sustained over a period of time, as in this case, the date of injury is the date of last exposure to the employment factors causing the injury.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

In the October 23, 2012 statement, appellant related that he had not incurred wage loss and had not used leave due to his hearing loss. In this case, in determining the amount of compensation payable under the schedule award, OWCP properly used the pay rate of \$507.30

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<sup>10</sup> The requirements of the evidence to be used in evaluating occupational hearing loss claims are defined by the Federal (FECA) Procedure Manual, which provides: that the employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; and a rationalized medical opinion regarding the relationship. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.600, *Requirements for Medical Reports*, Exhibit No. 4 (April 1996).

<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> *Id.* at § 8101(4); *see also Charles P. Mulholland*, 48 ECAB 604, 605-06 (1997).

<sup>13</sup> *See Robert A. Flint*, 57 ECAB 369, 374 (2006).

<sup>14</sup> *Barbara A. Dunnivant*, 48 ECAB 517, 519 (1997); *Sherron A. Roberts*, 47 ECAB 617, 619 (1996).

per week, which was the rate in effect on August 16, 1987, the date of last exposure to hazardous noise, as this was the date of injury.

The Board notes that OWCP's June 4, 2013 award of compensation letter lists the effective date of pay rate as January 29, 2013. This date represents the effective date for the payment of the schedule award, rather than the date of the applicable pay rate for computation purposes. The Board further notes that, in calculating appellant's schedule award, OWCP used a date of injury of February 10, 1987. The record contains statements and forms from both the employing establishment and appellant confirming that the date of last exposure to hazardous noise was August 16, 1987, which was the date that appellant changed positions from sheet metal mechanic to production controller. Therefore, the Board finds that OWCP used the incorrect date of injury for appellant's claim and that the correct date of injury was August 16, 1987. However, as the record also establishes that appellant's hourly wage -- and thus his pay rate -- remained constant between December 16, 1986 and August 16, 1987, the Board finds that this was harmless error.

On appeal, appellant states that OWCP should have used the date disability began as the effective pay rate, alleging that he was disabled as of August 2, 2012 and that because his pay rate on this date was greater than his pay rate on February 10, 1987, this pay rate should have been used by OWCP in calculating his schedule award.

The word "disability," as used in FECA, means "incapacity because of an injury in employment to earn wages which the employee was receiving at the time of such injury." This meaning, for brevity, is expressed as "disability for work."<sup>15</sup> OWCP's procedures provide that in occupational disease claims where the claimant is no longer exposed to the claimed work factors and there has been a change in work duties, the date of last exposure is used to determine the effective pay rate.<sup>16</sup> In a statement received on October 23, 2012, appellant noted that he had not experienced wage loss or used leave as a result of his condition. There is no evidence of record indicating that appellant was disabled for work at any time due to his hearing loss. Therefore, neither the date disability began nor the date disability recurred are applicable to appellant's claim, as he was not disabled for work. The proper pay rate for schedule award purposes in the absence of disability or recurrence of disability is the date of injury, which was August 16, 1987.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant has established that he is entitled to a schedule award for 10 percent binaural hearing loss. The Board also finds that OWCP used the proper pay rate for compensation purposes in its June 4, 2013 decision.

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<sup>15</sup> *Supra* note 13.

<sup>16</sup> *See supra* note 12; *see also Patricia K. Cummings*, 53 ECAB 623, 625 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 4, 2013 is affirmed, as modified.

Issued: April 17, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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