

from various pneumatic tools, chipping, grinding, drilling, hammering, sandblasting fans and lawn mowers.

OWCP referred appellant for a second opinion examination to Dr. Eugenia Gray, an otolaryngologist. In an October 15, 2012 report, Dr. Gray diagnosed moderate, bilateral noise-induced sensorineural hearing loss and checked a box indicating that his noise exposure in his federal employment was sufficient to cause binaural hearing loss. An audiogram performed on her behalf on October 3, 2012 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following decibel losses: 20, 20, 25 and 50 for the right ear and 20, 20, 25 and 45 for the left ear, respectively. Based on these results and in accordance with American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009), Dr. Gray determined that appellant had a four percent binaural hearing loss. She recommended hearing aids. On the form report she added 3 percent impairment for tinnitus, resulting in a total 8.62 percent monaural hearing impairment in the right ear (5.62 percent + 3 percent for tinnitus) and 6.75 percent monaural hearing impairment in the left ear (3.75 percent + 3 percent for tinnitus). Dr. Gray calculated a binaural hearing impairment of seven percent. She listed October 3, 2012 as the date of maximum medical improvement.

In a December 5, 2012 decision, OWCP accepted appellant's claim for binaural hearing loss.

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

In a February 8, 2013 report, Dr. Duane J. Taylor, an OWCP medical adviser, reviewed Dr. Gray's report and audiometric test results. He concurred with her audiometric findings that appellant had a 5.62 percent monaural hearing in the right ear and a 6.75 monaural hearing in the left ear, which yielded a 4 percent sensorineural binaural hearing loss. Dr. Taylor omitted the rating for tinnitus. He determined that the date of maximum medical improvement was October 3, 2012, the date of Dr. Gray's examination and authorized hearing aids.

By decision dated February 4, 2014, OWCP granted appellant a schedule award for a four percent binaural hearing loss. This award covered the period from October 3 to November 17, 2012, for a total of eight weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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

The requirements of the evidence to be used in evaluating occupational hearing loss claims require 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.¹⁰

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.¹¹ It 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.¹²

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ See *Joshua Holmes*, 42 ECAB 231 (1990).

¹¹ See A.M.A., *Guides* 249.

¹² *Id.* See also *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004).

ANALYSIS

On appeal, appellant's counsel contends that appellant has greater impairment based upon the opinion of Dr. Gray.

OWCP accepted that appellant sustained a bilateral hearing loss due to noise. It developed the claim by referring him to Dr. Gray. On October 3, 2012 Dr. Gray examined appellant and an audiogram was obtained on the physician's behalf. Using OWCP's standard procedures, his noise exposure in his federal employment was sufficient to cause binaural hearing loss. The October 3, 2012 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 20, 20, 25 and 50 respectively in the right ear. The total decibel loss in the right ear is 115. When divided by 4, the result is an average hearing loss of 28.75 decibels. The average of 28.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 3.75 decibels, which when multiplied by the established factor of 1.5 computes a 5.62 percent hearing loss in the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 20, 20, 25 and 45 respectively. The total decibel loss in the left ear is 110. When divided by 4, the result is an average hearing loss of 27.5 decibels. The average hearing loss of 27.5 is reduced by the fence of 25 decibels to 2.5, which when multiplied by the established factor of 1.5 computes a 3.75 percent hearing loss in the left ear. To obtain the binaural loss, the lessor loss of 3.75 was multiplied by 5 to equal 18.75, which was then added to the greater loss of 5.62 to total 24.37, which was then divided by 6 to equal 4. Therefore, appellant sustained a four percent binaural hearing loss.

By decision dated February 4, 2014, appellant was granted a schedule award for a four percent binaural hearing loss. The issue is whether he has established that he has greater impairment. Dr. Gray noted +3 tinnitus and diagnosed bilateral sensorineural hearing loss and noise-induced hearing loss. She added three percent impairment for tinnitus to the four percent bilateral hearing loss to find a total hearing impairment of seven percent.

The Board finds this case not in posture for a decision as clarification is required from Dr. Gray as to why she added three percent impairment for tinnitus. Regarding tinnitus, the A.M.A., *Guides* states, tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent may be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹³ Although Dr. Gray included three percent impairment for tinnitus to appellant's impairment determinations, she did not address how this impacted him in his activities of daily living.¹⁴

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done. It undertook development of the evidence by referring appellant to Dr. Gray.

¹³ See *R.D.*, 59 ECAB 127 (2007); *David W. Ferrall*, 56 ECAB 362 (2005).

¹⁴ *R.G.*, Docket No. 11-19 (issued August 3, 2011); *J.P.*, Docket No. 09-1520 (issued March 1, 2010).

OWCP has the duty to secure an appropriate report addressing the relevant issues.¹⁵ Because Dr. Gray did not explain why she included a rating for tinnitus in her determination of appellant's hearing loss, the case will be remanded to obtain a supplemental report explaining her rationale on how his tinnitus impacts his activities of daily living.¹⁶ Following this and any necessary further development, OWCP shall issue a *de novo* decision relative to his hearing impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant has more than a four percent binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2014 is set aside and the case remanded for further development consistent with the above opinion.

Issued: August 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁶ *V.D.*, Docket No. 13-331 (issued August 12, 2013).