



noise exposure. He stated that he first became aware of his condition and its relation to his federal employment on October 10, 2013. Appellant did not stop work at that time, but later retired on March 31, 2014.

By letter dated February 20, 2014, OWCP notified appellant of the type of evidence needed to establish his claim.

In a January 24, 2014 statement, appellant detailed his work history. He worked as a construction worker from 1977 through 1980 where he was exposed to the noise of various saws and hammers for eight hours a day without hearing protection. From 1981 to 1987 appellant worked as a truck driver where he was not exposed to a significant amount of noise. From 1987 to 2011 he worked at the employing establishment as an electrician, where he was exposed to the noise of needle guns, grinders, ventilation fans, sanders, sand blasters, pumps, and cranes. The employing establishment provided hearing protection. Since 2011, appellant worked as an electrician supervisor at the employing establishment where he mostly worked in an office setting, although he was exposed to noise from “trades” while working on ships four hours a week.

Several audiograms from the employing establishment were submitted. An October 10, 2013 audiogram recorded losses of 15, 40, 45, and 40 in the left ear and 15, 45, 40, and 55 in the right ear at the levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz).<sup>2</sup>

In a January 24, 2014 report, Dr. Gerald Randolph, a Board-certified otolaryngologist to whom appellant was referred by a hearing aid center, noted evaluating appellant with regard to a hearing loss claim. He advised that appellant related to him that he had been experiencing hearing loss for the past five years and that he found it difficult to understand communication by telephone and in background noise. Dr. Randolph noted that appellant had significant industrial noise exposure. He provided findings on examination and advised that audiometric testing revealed bilateral sensorineural hearing loss. An accompanying January 24, 2014 audiogram recorded decibel losses of 20, 40, 50, and 50 in the left ear and 25, 45, 45, and 55 for the right ear at 500, 1,000, 2,000, and 3,000 Hz. Dr. Randolph also noted that there might be other causes of appellant’s hearing loss, in addition to workplace noise, given that his hearing loss was not greater in the frequencies generally affected by noise. He stated that he was concerned that appellant’s hearing would continue to degenerate due to factors other than industrial noise and advised that appellant was a good candidate for hearing aids.

On March 11, 2014 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Robert Marlan, a Board-certified otolaryngologist, for a second opinion. In an April 9, 2014 report, Dr. Marlan reviewed appellant’s history and noted that appellant reported having difficulty hearing in both quiet and noisy environments. He noted findings on examination and diagnosed progressive sensorineural hearing. Dr. Marlan opined that workplace exposure was of sufficient intensity and duration to worsen appellant’s hearing loss. An accompanying April 9, 2014 audiogram performed for Dr. Marlan recorded decibel losses of 15, 40, 40, and 35 in the left ear and 15, 40, 30, and 45 in the right ear at 500, 1,000, 2,000, and 3,000 Hz. Dr. Marlan advised that the hearing loss was in excess of what would be

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<sup>2</sup> These audiograms were not certified by a physician.

predicted on the basis of presbycusis and that the hearing loss was due to workplace noise exposure. In an accompanying worksheet, he indicated that appellant had 11.25 percent bilateral hearing loss.

By decision dated April 15, 2014, OWCP accepted appellant's claim for bilateral hearing loss and authorized hearing aids.

In an April 17, 2014 report, an OWCP medical adviser calculated appellant's hearing loss using the April 9, 2014 audiogram and confirmed that appellant had 11.25 percent bilateral hearing loss under OWCP's standard formula for determining hearing loss. He did not address the January 24, 2014 audiogram performed for Dr. Randolph.

In an April 23, 2014 claim for compensation (Form CA-7), appellant requested a schedule award.

By decision dated June 16, 2014, OWCP granted appellant a schedule award for 11 percent binaural hearing loss. The award was for 22 weeks of compensation running from April 9 to September 9, 2014. OWCP advised that the award was based on the reports of Dr. Marlan and an OWCP medical adviser.

### **LEGAL PRECEDENT**

The schedule award provision of FECA 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 of 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating scheduled loss and the Board has concurred in such adoption.<sup>3</sup>

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 cycles per second, the losses at each frequency are added up and averaged. 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.<sup>4</sup> 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 and 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

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<sup>3</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

<sup>4</sup> *See* A.M.A., *Guides* 250.

adoption of this standard for evaluating hearing loss.<sup>5</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>6</sup>

### ANALYSIS

In support of his claim, appellant provided Dr. Randolph's January 24, 2014 report where he diagnosed sensorineural hearing loss that was at least partially due to workplace noise exposure. An accompanying January 24, 2014 audiogram performed for Dr. Randolph recorded decibel losses of 20, 40, 50, and 50 in the left ear and 25, 45, 45, and 55 for the right ear at 500, 1,000, 2,000, and 3,000 Hz. OWCP subsequently referred appellant for a second opinion with Dr. Marlan. The April 9, 2014 audiogram performed for Dr. Marlan recorded decibel losses of 15, 40, 40, and 35 in the left ear and 15, 40, 30, and 45 in the right ear at 500, 1,000, 2,000, and 3,000 Hz. Thereafter, OWCP accepted the claim for bilateral hearing loss. After applying the standards contained in the A.M.A., *Guides*, to the April 9, 2014 audiogram performed for Dr. Marlan, OWCP issued appellant a schedule award for 11 percent binaural hearing loss. On appeal, appellant asserts that his schedule award should have been based on the January 24, 2014 audiogram performed for Dr. Randolph.

The Board finds that this case is not in posture for decision. When several audiograms are in the case, as here, and all are made within approximately two years of each other and are submitted by more than one specialist, OWCP should have all of such audiograms evaluated to determine the percentage loss of hearing shown by each. In making a determination of the percentage of loss of hearing for a schedule award, OWCP should give an explanation as to why it selected one audiogram over the others.<sup>7</sup> It should not arbitrarily select one audiogram without explanation, even though the one selected is the most recent, in those instances where other specialists have submitted current audiograms.<sup>8</sup> If OWCP determines that there is a conflict regarding the percentage loss of hearing, it may give rationale for selecting one report over the others, or in the alternative it may have another evaluation made to resolve the matter.<sup>9</sup>

In the present case, an OWCP medical adviser's April 17, 2014 report only reviewed the April 9, 2014 audiogram performed for Dr. Marlan. The medical adviser did not address the January 24, 2014 audiogram performed for Dr. Randolph, which showed greater hearing loss. OWCP's June 16, 2014 decision also did not provide any reasoning regarding its award. On remand, OWCP shall have its medical adviser evaluate the audiograms of record that were obtained by a physician to determine the percentage of hearing loss shown by each. It shall provide medical rationale for selecting one audiogram as more reliable than the other or, in the

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<sup>5</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>6</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

<sup>7</sup> *Joshua A. Holmes*, 42 ECAB 231 (1990).

<sup>8</sup> *H.M.*, Docket No. 11-108 (issued August 9, 2011).

<sup>9</sup> *Harry Frank*, 33 ECAB 261 (1981).

alternative, arranging another medical evaluation of appellant's condition.<sup>10</sup> After conducting such further development as it may find necessary, OWCP shall render an appropriate merit decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 22, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> See *id.*