



of employment-related noise exposure. He first became aware of his condition and of its relationship to his employment on November 21, 2012. Appellant notified his supervisor on November 26, 2012.

By letter dated December 13, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, whether he wore ear protection and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

A December 20, 2012 memorandum from the employing establishment was provided which described appellant's exposure to noise.

In an April 12, 2013 statement of accepted facts (SOAF), OWCP noted that appellant had been a CBP officer since May 16, 1991. Appellant was exposed to firearm qualification noise levels which were scheduled once every three months. He was further exposed to noise from passenger vehicles and commercial vehicles which were processed daily. Earmuffs and earplugs were provided.

Annual hearing conservation data and audiograms were submitted from November 18, 2002 to November 21, 2012. Appellant's most recent November 21, 2012 audiogram revealed the following decibels (dB) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 10, 10, 5 and 20 for the right ear and 10, 10, -5 and 5 for the left ear. Speech discrimination scores were 84 percent on the right ear and 100 percent on the left.

OWCP referred appellant to Dr. Ronald Blumenfeld, a Board-certified otolaryngologist, for a second opinion evaluation on May 2, 2013. It provided a SOAF addressing appellant's federal work duties and the type of employment-related noise to which he was exposed. An audiogram was completed on May 2, 2013 which revealed the following dB losses at 500, 1,000, 2,000 and 3,000 Hz: 10, 15, 5 and 30 for the right ear and 10, 15, 5 and 10 for the left ear. Speech reception thresholds were 10 dB bilaterally and auditory discrimination scores were 100 percent bilaterally. Dr. Blumenfeld reported that appellant suffered gradual progressive hearing loss of the right ear from 2002 to 2013. He diagnosed high frequency sensorineural noise-induced hearing loss in the right ear and bilateral tinnitus which was due to appellant's federal civilian employment and was in excess of what would normally be predicated on the basis of presbycusis. Dr. Blumenfeld noted that appellant's bilateral tinnitus had been present since 1998 but did not interfere with his daily activities or quality of life. He recommended ear protection and periodic hearing evaluations.

On May 22, 2013 OWCP referred the case file to Dr. Morley Slutsky, a district medical advisor, to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement.

In a May 24, 2013 report, Dr. Slutsky reported that appellant sustained work-related bilateral sensorineural hearing loss. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*), he applied the audiometric data to OWCP's standard for evaluating hearing loss. Dr. Slutsky determined that appellant had zero percent monaural hearing loss in the left ear, zero percent monaural hearing loss in the right ear and zero percent binaural hearing loss.<sup>3</sup> Appellant had no ratable hearing loss or additional rating for tinnitus. Dr. Slutsky recommended hearing aids for the right ear, noting that the left ear did not need amplification. The date of maximum medical improvement was noted as May 2, 2013.

On July 27, 2013 appellant filed a claim for a schedule award.

By decision dated June 19, 2013, OWCP accepted appellant's claim for bilateral hearing loss and tinnitus.

In a decision dated June 21, 2013, OWCP found that appellant's hearing loss was not severe enough to be ratable. Therefore, it denied his claim for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> 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 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 A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</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 dB is deducted because, as the A.M.A., *Guides* points out, losses below 25 dB result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>6</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, then added to the greater loss and the total is divided by six to arrive at the

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Id.* at 252, Table 11-2.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>6</sup> *See* A.M.A., *Guides* 250.

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

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.<sup>8</sup> The A.M.A., *Guides* 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 hearing impairment.<sup>9</sup>

### ANALYSIS

Appellant filed a claim for hearing loss and was referred to Dr. Blumenfeld for a second opinion examination. After reviewing the SOAF and medical file, conducting a thorough physical evaluation and obtaining an audiogram on May 2, 2013, Dr. Blumenfeld diagnosed high frequency sensorineural noise-induced hearing loss in the right ear and bilateral tinnitus. Dr. Slutsky reviewed Dr. Blumenfeld's report and diagnosed work-related bilateral sensorineural hearing loss. He concluded that appellant had no ratable hearing loss to warrant a schedule award. By decision dated June 19, 2013, OWCP accepted appellant's occupational disease claim for bilateral hearing loss. By decision dated June 21, 2013, it denied his schedule award claim.

The Board finds that OWCP properly denied appellant's schedule award claim. According to the audiometry obtained on May 2, 2013, appellant's hearing thresholds were 10, 15, 5 and 30 dB on the right and 10, 15, 5 and 10 dB on the left. These total 60 and 40 dB, respectively, for averages of 15 and 10 dB. Because these averages are below the fence of 25 dB, appellant is deemed to have no impairment in his ability to hear every day sounds under everyday listening conditions.<sup>10</sup> This does not mean that he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Dr. Slutsky applied the proper standards to the May 2, 2013 audiogram. Appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's nonratable hearing loss.

The Board further finds that OWCP properly denied a schedule award for tinnitus.<sup>11</sup> FECA does not list tinnitus in the schedule of eligible members, organs or functions of the body. A claimant may not directly receive a schedule award for tinnitus. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule

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<sup>7</sup> See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>8</sup> See A.M.A., *Guides* 249.

<sup>9</sup> *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

<sup>10</sup> See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

<sup>11</sup> *Id.*

award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with activities of daily living, up to five percent may be added to a measurable binaural hearing impairment.<sup>12</sup> The Board has held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.<sup>13</sup> Although OWCP accepted appellant's condition for bilateral tinnitus, as his hearing loss is not ratable, the Board will affirm OWCP's July 21, 2013 decision finding that he was not entitled to a schedule award.

On appeal, appellant argues that his May 2, 2013 audiologic examination results were inaccurate because he was not in a true soundproof box during testing. He requested a new examination or that OWCP use his previously submitted audiograms. The Board notes that appellant's most recent audiogram prior to the May 2, 2013 examination was on November 21, 2012. The November 21, 2012 audiogram revealed appellant's hearing thresholds were 10, 10, 5 and 20 for the right ear and 10, 10, -5 and 5 for the left ear. Averages for the right and left ear hearing thresholds also fall below the fence of 25 dB. Thus, like the May 2, 2013 audiogram, appellant's November 21, 2012 audiogram does not establish that he has impairment in his ability to hear every day sounds under everyday listening conditions entitling him to a schedule award.<sup>14</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.

### **CONCLUSION**

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.

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<sup>12</sup> See *supra* note 8.

<sup>13</sup> See *Richard Larry Enders*, 48 ECAB 184 (1996).

<sup>14</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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