



of noise exposure while working at a commercial truck importation lot from diesel truck traffic and from gunfire. She became aware of her condition and of its relationship to her employment on November 26, 2012. Appellant notified her supervisor on January 16, 2013.

Appellant responded to OWCP's standard questionnaire regarding hearing loss on January 22, 2013. She noted that she had worked for the employing establishment since August 1999 in passenger processing. While working in this area, appellant was exposed to high levels of noise from hundreds of gasoline and diesel fuel engines, air brakes of passenger buses and pedestrian traffic, for 8 to 16 hours per day. She was provided with foam earplugs, but these were rarely used due to protocols regarding officer safety and awareness of surroundings. Appellant also worked at seaports, airports and railway stations, where she was exposed to loud noises from airplanes, the engine rooms of large cargo vessels, locomotive horns and rail cars striking each other, for up to four hours at a time depending on the size of the vessel to be inspected. Hearing protection was not provided for these assignments. Appellant engaged in quarterly firearms qualifications at the employing establishment, in which she was exposed to up to two hours of gunfire from various types of weapons. Hearing protection was provided for these events. Appellant noted that she was still exposed to hazardous noise at work, as she was currently assigned to the commercial truck importation lot, which had constant diesel truck traffic. She stated that she had first noticed her hearing loss in January 2009 as a ringing in her ears and that she realized that her hearing loss was work related at the same time. Prior to her employment with the employing establishment, appellant had no hearing problems. She asserted that her hearing problems were disruptive to her normal daily life, making it difficult to watch television or talk on the telephone. Appellant's hobbies involving exposure to loud noise included fishing and deer hunting, but she wore hearing protection while hunting and noted that the exposure to noise while fishing was minimal.

Appellant submitted audiogram results from examinations performed on November 26 and December 3, 2012 from a person with an illegible signature. Audiometric testing obtained on November 26, 2012 at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed the following: left ear-88, 100, 88 and 95 decibels (dBs); right ear-88, 95, 100 and 100 dBs. Audiometric testing obtained on December 3, 2012 revealed the following: left ear-100, 85, 90 and 95 dBs; right ear-100, 100, 95 and 100 dBs.

By letter dated January 25, 2013, OWCP requested additional factual evidence from appellant. It afforded her 30 days to submit additional evidence. OWCP also requested that appellant's employing establishment respond to its inquiries regarding duties of her employment. Appellant resubmitted her earlier statement, which contained responses to all of OWCP's inquiries.

By letters dated February 19 and 25, 2013, OWCP referred appellant to Dr. Gregory S. Rowin, a Board-certified otolaryngologist and osteopath, for measurements of her current hearing acuity to be taken on April 2, 2013. It included a statement of accepted facts regarding her federal employment history.

Appellant attended an examination on March 12, 2013 with Dr. James J. Sorce, a Board-certified otolaryngologist, who occupied the same office as Dr. Rowin. In a record of a telephone conversation dated April 1, 2013, OWCP informed her that it could not accept this

report and that she needed to see Dr. Rowin on April 2, 2013 as originally scheduled. Appellant reported to OWCP that she had attended this appointment. By letter dated April 23, 2013, however, OWCP scheduled another appointment with Dr. Rowin on April 23, 2013.

In a report dated April 2, 2013, Dr. Rowin reviewed appellant's history of occupational exposure to hazardous noise and performed an otologic evaluation. Audiometric testing obtained by Charles Butler, M.A., on April 23, 2013 at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed the following: left ear-85, 80, 85 and 90 dBs; right ear-85, 70, 85 and 90 dBs. He noted that the testing occurred at 2:00 p.m. and that the time of appellant's last exposure to loud noise was at least 16 hours before the examination. The audiological equipment had been last calibrated on October 11, 2012. Dr. Rowin determined that appellant sustained severe to profound mixed bilateral hearing loss with a mild conductive component present. He found that her hearing loss was due to noise exposure in her federal employment, writing that the pattern of appellant's audiogram was consistent with noise exposure. Dr. Rowin also stated that hearing aids were recommended. In calculating appellant's binaural hearing impairment, he added five percent to appellant's percentage of impairment for tinnitus impacting her ability to perform activities of daily living (ADLs).

By decision dated May 15, 2013, OWCP accepted appellant's claim for bilateral hearing loss due to noise exposure.

On May 16, 2013 Dr. Ronald H. Blum, a district 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 a 91.9 percent ratable binaural hearing loss: 86.9 percent binaural loss and 5 percent for tinnitus. He concluded that noise exposure in the course of her federal employment was sufficient to implicate it as a contributing factor to her hearing loss. Hearing aids were authorized.

On May 22, 2013 appellant filed a claim for a schedule award.

By decision dated August 2, 2013, OWCP granted appellant a schedule award for 92 percent binaural hearing loss. The award ran for 184 weeks from April 23, 2013 through October 31, 2016.

### **LEGAL PRECEDENT**

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

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

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

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury. The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on the probative medical evidence of record and is usually considered to be the date-of-the evaluation by the attending physician which is accepted as definitive by OWCP.<sup>8</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>9</sup> The A.M.A., *Guides* state that, if tinnitus interferes with ADLs, 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has a 92 percent binaural hearing loss.

Appellant's claim of occupational hearing loss was accepted by OWCP based on the reports of Dr. Rowin and Dr. Blum, a district medical adviser. OWCP's standardized procedures

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<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> *Supra* note 3; 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).

<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> *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

<sup>9</sup> See A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009).

<sup>10</sup> *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

were applied to Dr. Rowin's April 2, 2013 report. Test results at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz on the left revealed decibel losses of 85, 80, 85 and 90 dBs respectively, for a total of 340 dBs. This figure, divided by four, results in an average hearing loss of 85 dBs. The average of 85 dBs, when reduced by the 25 dB fence and multiplied by 1.5, results in a 90 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 Hz revealed dB losses of 85, 70, 85 and 90 dBs respectively, for a total loss of 330 dBs. Three hundred-thirty dBs divided by four results in an average of 82.5 dBs, which when reduced by the 25 dB fence and multiplied by 1.5, results in an 86.25 percent monaural hearing loss of the right ear. Multiplying the lesser loss of 86.25 by 5 arrives at a product of 431.25. Adding this figure to the 90 percent hearing loss of the left ear obtains a total of 521.25. Dividing this total by six in order to calculate a binaural hearing loss yields an 86.875 percent binaural impairment. Adding 5 percent to appellant's impairment due to tinnitus, as recommended by Dr. Rowin, results in a final figure of 91.875 percent binaural hearing loss.<sup>11</sup> Rounding up from 91.875 to 92 percent, as provided in OWCP's procedures, arrives at appellant's 92 percentage of impairment for schedule award purposes.<sup>12</sup>

There is no other medical evidence of record establishing greater loss under OWCP procedures. The records of audiometric tests performed on November 26 and December 3, 2012 do not meet the requirements of evidence to be used in evaluating occupational hearing loss claims as defined in the Federal (FECA) Procedure Manual, because the reports merely provide the results of each test.<sup>13</sup>

On appeal, appellant argues that the compensation rate of 66 and 2/3 percent of her weekly pay should be increased to 92 percent, her percentage of impairment. The Board finds that OWCP used the proper compensation rate to determine her schedule award, as there is no evidence of record establishing that she has eligible dependents and would be entitled to the

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<sup>11</sup> The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks. 5 U.S.C. § 8107(c)(13)(a). Appellant's monaural hearing loss of the left ear is 90 percent. Ninety percent of 52 weeks equals 46.8 weeks of compensation. The right ear's ratable loss of 86.25 percent equals 44.85 weeks of compensation. 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); *Reynaldo R. Lichtenberger*, 52 ECAB 462, 464 (2001).

<sup>12</sup> The Board notes that 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) (January 2010).

<sup>13</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. *Supra* note 12 at Chapter 3.600, Requirements for Medical Reports, Exhibit No. 4 (September 1996).

augmented rate of 75 percent of her base weekly pay. The basic compensation rate for a schedule award is 66 and 2/3 percent, the rate used in this case.<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 92 percent binaural hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award Payments*, Chapter 2.808.7.f (February 2013).