

On appeal, appellant contends that he is entitled to 100 percent of his compensation due to the loss of his hearing which can never be returned.

FACTUAL HISTORY

On August 1, 2012 appellant, a 57-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss due to exposure to high noise levels on a constant basis in the performance of duty over the past 19 years.

In an August 16, 2012 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement including his employment history, a position description and audiograms dated November 23, 2010 and May 23, 2011.

In a June 15, 2011 report, Dr. Chi Nguyen, a Board-certified otolaryngologist, diagnosed bilateral sensorineural hearing loss, subjective tinnitus and Eustachian tube dysfunction. He opined that appellant's hearing loss was likely due to loud noise exposure at work, including loud traffic noises.

OWCP referred appellant and a statement of accepted facts to Dr. Gregory Rowin, an otolaryngologist, for a second opinion evaluation, who performed an otologic evaluation of appellant on February 28, 2013 and audiometric testing was obtained on his behalf. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed the following: right ear 45, 40, 50 and 50 decibels (dB); left ear 70, 60, 60 and 70 dB. Dr. Rowin determined that appellant sustained moderate-to-severe sensorineural hearing loss in the right ear and moderately severe-to-severe sensorineural hearing loss in the left ear. He opined that appellant's binaural hearing loss was causally related to his exposure to noise during the course of his federal employment. Dr. Rowin also found that appellant's tinnitus impacted his ability to perform activities of daily living.

On March 28, 2013 an OWCP medical adviser, Dr. H. Mobley, reviewed Dr. Rowin's report and the audiometric test of February 28, 2013. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 42 percent binaural hearing loss. Dr. Mobley noted that five percent was added for appellant's tinnitus and the date of maximum medical improvement was February 28, 2013, the date of Dr. Rowin's second opinion examination and report.

By decision dated April 30, 2013, OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure.

On May 10, 2013 appellant filed a claim for a schedule award.

By decision dated May 28, 2013, OWCP granted appellant a schedule award for 42 percent binaural hearing loss impairment, entitling him to 84 weeks of compensation. The period of the award ran from February 28, 2013 to October 8, 2014.

LEGAL PRECEDENT

The schedule award provision of FECA³ 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁴

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 cps, 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. 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 the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵

ANALYSIS

Dr. Mobley reviewed the report of Dr. Rowin, to whom OWCP referred appellant for an otologic examination and audiological evaluation. Dr. Rowin reported that appellant sustained moderate-to-severe sensorineural hearing loss in the right ear and moderately severe-to-severe sensorineural hearing loss in the left ear. Dr. Mobley properly applied OWCP's standardized procedures to Dr. Rowin's February 28, 2013 audiogram, which recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cps levels and revealed dB losses of 45, 40, 50 and 50 respectively in the right ear for a total dB loss of 185 on the right. He divided this total by 4, which resulted in an average loss of 46.3 dB. Dr. Mobley subtracted the fence of 25 dB to equal 21.3 dB. He then multiplied this by the established factor of 1.5 to result in a 32 percent monaural hearing loss for the right ear. Dr. Mobley properly followed the same procedure on the left, noting that the test results for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed dB losses of 70, 60, 60 and 70 dB respectively, for a total of 260 dB. He divided this by 4, for an average hearing loss of 65 dB, subtracted the fence of 25 dB to equal 40 dB and multiplied this by the established factor of 1.5, for a 60 percent monaural hearing loss for the left ear. Dr. Mobley then multiplied the 32 percent right ear hearing loss by 5, added the 60 percent left

³ *Supra* note 1.

⁴ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ 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).

ear hearing loss and divided the total by 6, for a total of 37 percent binaural hearing loss. To this, he added 5 percent for appellant's tinnitus, to total 42 percent binaural hearing loss. The medical evidence established that appellant has a 42 percent binaural hearing loss.⁶

On appeal, appellant contends that he is entitled to 100 percent of his compensation due to the loss of his hearing which can never be returned. A schedule provides for payment of compensation for a specific number of weeks as prescribed by the statute.⁷ With regard to appellant's contention that he is entitled to a schedule award for greater than a 42 percent binaural hearing loss, section 8107(c)(13)(B) provides that for a 100 percent loss of hearing of both ears, a claimant is entitled to 200 weeks' compensation.⁸ As he sustained 42 percent binaural hearing loss, he is entitled to 84 weeks' compensation, which is what OWCP awarded. Appellant is entitled to no more under FECA.

The Board has recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relation is supported by the medical evidence of record.⁹ The record does not contain an accompanying report by a physician providing a rationalized medical opinion on greater permanent impairment. The Board finds that there is no basis on which to grant a schedule award for more than a 42 percent binaural hearing loss under OWCP's standardized procedures.¹⁰

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 that he sustained more than a 42 percent binaural (both ears) loss of hearing, for which he received a schedule award.

⁶ See *S.G.*, 58 ECAB 383 (2007).

⁷ 5 U.S.C. § 8107.

⁸ *Id.* at § 8107(c)(13)(B).

⁹ See *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.9(b) (February 2013). If, on the other hand, the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent of impairment and period of award. See also *id.* at Chapter 2.808.9(c) (February 2013).

¹⁰ Cf. *Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2014
Washington, DC

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

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

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