



employment on January 9, 2013. Appellant did not stop work at that time, but later retired on November 30, 2013.

A January 9, 2013 audiogram from the public health service tested appellant's decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded decibel losses of 35, 30, 30 and 45 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 30, 35, 45 and 35. The results of the audiogram were reviewed by Dr. Fred Rosenberg, an osteopath, who noted that he observed scar tissue during a physical examination of the ears. Dr. Rosenberg also recommended that appellant undergo a hearing evaluation. Also submitted was a June 20, 2006 audiogram that tested decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded decibel losses of 10, 10, 20 and 15 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 10, 10, 15 and 50.

In an April 9, 2013 statement, appellant noted that he served in the military from 1983 to 1986. He was exposed to jet and turbine power transformer noise once a week for 8 to 10 hours per day with hearing protection. From 1993 to 2013 appellant served as a border patrol agent. There he was exposed to noise from quarterly qualifications for eight hours a day with the use of hearing protection. From 1993 to 1998 appellant was exposed to heavy equipment noise for 10 hours a day for six months and noise from a power washer for 10 hours a month without hearing protection. From 2011 to 2013 he was exposed to flight-line engine noise and aerial flights overhead. Appellant also has nonfederal noise exposure from local law enforcement from 1987 to 1993.

In an April 22, 2013 report, an audiologist with the Sierra Hearing Center, advised that appellant had gradually/increasing hearing difficulty bilaterally and high frequency sensorineural hearing loss. The report noted that appellant had a significant history of noise exposure from the military, local law enforcement, and customs and border patrol. An accompanying April 22, 2013 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded decibel losses of 25, 25, 35, and 55 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 25, 30, 40, and 45.

In a May 22, 2013 response to an OWCP questionnaire, the employing establishment concurred with appellant's statements regarding his exposure to work-related noise. It noted that appellant had been exposed to firearm noise four days a year since 1993. The employing establishment also advised that inner and outer ear protection had been provided since at least 2000.

An October 29, 2013 statement of accepted facts detailed appellant's work history and exposure to work-related noise consistent with his statement and that of the employing establishment.

On December 5, 2013 appellant was referred to Dr. David Miyama, a Board-certified otolaryngologist, for a second opinion. Dr. Miyama diagnosed moderate sensorineural hearing loss. He noted that appellant had a gradual longstanding hearing loss bilaterally with some tinnitus. Dr. Miyama opined that appellant's hearing loss was consistent with noise exposure. An accompanying December 5, 2013 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded decibel losses of 30, 30, 30, and 50 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 35, 35, 35, and 45. In a January 21, 2014 follow-up note, Dr. Miyama clarified that appellant's hearing loss was consistent with noise

exposure which could have occurred at work or that it could be due to presbycusis; however, he did opine that the hearing loss was more significant than what would be expected for someone of appellant's age.

By report dated March 4, 2014, Dr. Brian E. Schindler, a Board-certified otolaryngologist and OWCP medical consultant, reviewed the record. He opined that appellant's hearing loss was causally related to his federal employment. Dr. Schindler calculated 15 percent binaural hearing loss. He advised that he used the April 22, 2013 audiogram because appellant had Eustachian tube dysfunction, which caused a small conductive component to the hearing. Dr. Schindler further advised that he believed the April 22, 2013 audiogram to be reliable, if OWCP received confirmation that the audiometer had been calibrated within the last year. On May 29, 2013 the Sierra Hearing Center confirmed that the audiometer had been calibrated within that past year.

By decision dated March 13, 2014, OWCP accepted appellant's claim for bilateral hearing loss and authorized hearing loss.

In a March 22, 2014 claim for compensation (Form CA-7), appellant requested a schedule award.

By decision dated May 29, 2014, OWCP issued appellant a schedule award for 15 percent binaural hearing loss. The award was for 30 weeks of compensation from December 5, 2013 to May 31, 2014. OWCP advised that the award was based on the reports of Dr. Miyama and Dr. Schindler.

### **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 A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating scheduled loss and the Board has concurred in such adoption.<sup>2</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>3</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>2</sup> R.D., 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

<sup>3</sup> *See* A.M.A., *Guides* 250.

adoption of this standard for evaluating hearing loss.<sup>4</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>5</sup>

### ANALYSIS

The case record contains Dr. Miyama's December 5, 2013 and January 21, 2014 reports, which support that appellant sustained a sensorineural hearing loss. The December 5, 2013 audiogram performed for Dr. Miyama showed decibel losses of 30, 30, 30, and 50 in the left ear and 35, 35, 35, and 45 in the right ear at 500, 1,000, 2,000, and 3,000 hertz. On the other hand, the April 22, 2013 audiogram obtained by an audiologist confirmed decibel losses of 25, 25, 35, and 55 in the left ear and 25, 30, 40, and 45 for the right ear at the same frequency levels. Dr. Schindler applied the pertinent A.M.A., *Guides* provision to the April 22, 2013 audiometric results. He concluded that appellant had 15 percent binaural hearing impairment. Relying on the opinion of its medical adviser, OWCP granted a schedule award for 15 percent binaural hearing impairment for the period December 5, 2013 to May 31, 2014.

The Board finds that this case is not in posture for decision. When several audiograms are in the record, as here, and all are made within approximately two years of each other and are submitted by more than one specialist, OWCP should have each audiogram evaluated to determine the percentage loss of hearing. In making a determination of the percentage of loss of hearing for a schedule award, it should provide an explanation as to why it selected one audiogram over the others.<sup>6</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 obtain another evaluation to resolve the matter.<sup>7</sup>

In the present case, Dr. Schindler used the April 22, 2013 audiogram to calculate the percentage of loss as opposed to the December 5, 2013 audiogram stating Eustachian tube dysfunction caused a conductive component to the hearing.<sup>8</sup> The basis for this finding is not readily apparent from the record. Dr. Miyama stated that physical examination of the ears was normal while the technician for Dr. Rosenberg listed old scar tissue of the ear on examination.

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<sup>4</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>5</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>6</sup> *Joshua A. Holmes*, 42 ECAB 231 (1990); *Harry Frank*, 33 ECAB 261 (1981).

<sup>7</sup> *Id.*

<sup>8</sup> Using the December 5, 2013 audiogram performed for Dr. Miyama yields 16 percent binaural hearing loss using OWCP's standardized formula. See *supra* notes 3, 4. For the relevant thresholds, this audiogram showed decibel losses of 30, 30, 30, and 50 in the left ear and 35, 35, 35, and 45 in the right ear. The average loss for the left ear is 35. After subtracting the fence of 25, the result, 10, is multiplied by 1.5 to arrive at 15 percent monaural loss for the left ear. The average loss for the right ear is 37.5. After subtracting the fence of 25, the result, 12.5, is multiplied by 1.5 there to arrive at 18.75 percent monaural loss for the right ear. To determine the binaural loss, the lesser loss of 15 is multiplied by five, equaling 75, which is added to the greater loss of 18.75, which equals 93.75. This number is divided by six which yields a binaural loss of 15.625 percent. This number is rounded up to 16 percent. See *supra* note 5.

Dr. Schindler did not otherwise explain why the April 22, 2013 audiogram was more reliable and accurate than the December 5, 2013 audiogram.<sup>9</sup>

On remand, OWCP shall request Dr. Schindler for additional rationale as to how he determined that appellant had Eustachian tube dysfunction and whether this condition affects the reliability of the audiograms of record from 2013. After this and such other further development as may be necessary, OWCP shall issue an appropriate merit decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2014 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 25, 2014  
Washington, DC

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

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

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

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<sup>9</sup> An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated or accelerated appellant's condition, he is entitled to compensation. *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); S.S., Docket No. 08-2386 (issued June 5, 2008).