

FACTUAL HISTORY

On June 26, 2012 appellant, then a 63-year-old ship fitter, filed an occupational disease claim (Form CA-2) alleging that he suffered from bilateral hearing loss as a result of noise at work. He indicated that he first became aware of the condition and that it was causally related to his work on January 1, 1990. Appellant retired on January 9, 2007.

On February 1, 2013 OWCP denied appellant's claim as untimely filed. On February 21, 2013 appellant's counsel requested reconsideration. By decision dated September 5, 2013, OWCP found that appellant's claim was timely filed, as the employing establishment had timely notice of the alleged injury by his participation in the employing establishment's hearing conservation program. However, OWCP also found that the claim should be denied as no causal relationship had been established between appellant's hearing loss and his federal employment.

On April 29, 2014 appellant again requested reconsideration. In an April 16, 2014 report, Dr. Casey Nekl, a Board-certified otolaryngologist, noted that appellant's pure tone conduction threshold testing revealed mild sloping to profound mixed hearing loss in the left ear and severe to profound mixed hearing loss in the right ear. She noted that speech test results were in agreement with pure tone findings and his tympanograms were consistent with fluid in his ears. Dr. Nekl opined that based on appellant's case history and test findings, it appeared that he had hearing loss of a degree and pattern that is commonly associated with intense noise exposure, such as what appellant suffered while on his job with the employing establishment. She also noted that his case history was positive for tinnitus.

On November 10, 2014 OWCP accepted appellant's claim for mixed hearing loss bilateral and bilateral severe noise-induced hearing loss.

On March 10, 2015 appellant filed a claim for a schedule award.

OWCP referred appellant to Dr. Jeffrey Powell, a Board-certified otolaryngologist, for a second opinion examination. In a report dated September 23, 2014, Dr. Powell diagnosed chronic bilateral serous otitis media, mixed hearing loss bilateral, bilateral severe noise-induced hearing loss, and secondary tinnitus. He related that appellant's tinnitus was significant and persistent bilaterally, described as a constant high-pitched ringing noise which interfered with activities of daily living including interaction with his spouse and hearing the television. Appellant uses an assistive listening device to try to communicate better. He notes difficulty with tinnitus when there is a lot of background noise or a loud room. Dr. Powell noted that, although appellant did have bilateral middle ear fluid, that was most likely a contributing factor to his mixed hearing loss, the vast majority of his permanent loss was neurosensory in nature and secondary to loud noise exposure secondary to his federal civilian employment.

Audiometric testing was conducted on Dr. Powell's behalf on September 23, 2014. With regard to the left ear, he noted test results for 500, 1,000, 2,000, and 3,000 Hz of 55, 50, 80, and 90. Dr. Powell added these figures together to equal 275 and divided that amount by 4 and found an average of 68.75. He then reduced the amount by the threshold fence of 25 decibels (dB) which resulted in 43.75. Dr. Powell then multiplied this amount by 1.5 to find a 65.625 percent

monaural hearing loss in the left ear. He added 5 percent for tinnitus, and found a total monaural hearing loss in the left ear of 70.625 percent.²

With regard to the right ear, Dr. Powell found test results for 500, 1,000, 2,000, and 3,000 Hz of 60, 65, 75, and 95, respectively. He then added these figures together to reach 295 and divided that amount by 4 to find an average threshold for the 4 frequencies of 73.75. Dr. Powell then deducted the threshold fence of 25 dB which resulted in 48.75 and multiplied this by 1.5 to equal a 73.125 percent monaural loss. He added a 5 percent rating for tinnitus for a total 78.125 percent monaural hearing loss. Dr. Powell determined the binaural hearing loss by multiplying the lesser hearing loss of 70.625 by 5 which equaled 353.125. He then added the greater monaural loss of 78.125 to equal 431.25, which he divided by 6 to equal a binaural hearing loss of 71.875 percent.

Dr. Powell's report was referred to an OWCP medical adviser. On March 19, 2015 the OWCP medical adviser completed the Hearing Loss Medical Opinion (Form CA-51) (1977). For the left ear he found at the levels of 500, 1,000, 2,000, and 3,000 Hz appellant had hearing losses of 55, 50, 80, and 90, which he totaled and divided by 4 to find 68.75 from which he deducted the fence of 25 and found a balance of 43.75 which he multiplied by 1.5 to arrive at a 65.625 percent monaural hearing loss. For the right ear the medical adviser found that at 500, 1,000, 2,000, and 3,000 Hz appellant had losses of 60, 65, 75, and 95, which he totaled and divided by 4 to equal 73.125. He deducted the fence of 25 and found a balance of 48.75, which he multiplied by 1.5 to arrive at a 73.125 percent monaural loss. The medical adviser then took the lesser hearing loss of 65.625 and multiplied it by 5 and added this figure to the 73.75 greater loss and divided by 6 to result in a hearing loss of 66.875 rounded up to 67 percent binaural loss.³ He also indicated that hearing aids should be authorized. The CA-51 (March 1977) used to record his calculations does not contain a numerical line for consideration or assignment of impairment for tinnitus.

By decision dated April 21, 2015, OWCP issued a schedule award for a bilateral hearing loss of 67 percent.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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

² A.M.A., *Guides* (6th ed. 2009) 249, Chapter 11.2b Tinnitus, states 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 binaural hearing impairment.

³ The Board notes that it is the policy of OWCP to round the calculated percentage of impairment to the nearest whole point. See *Robert E. Cullison*, 55 ECAB 570 (2004); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (January 2010).

⁴ 5 U.S.C. §§ 8101-8193.

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 loss and the Board has concurred in such adoption.⁵

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.⁶ 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 adoption of this standard for evaluating hearing loss.⁷ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁸

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 binaural hearing impairment.⁹

ANALYSIS

After reviewing the report of Dr. Nekl, OWCP accepted appellant's claim for binaural hearing loss. It referred appellant to Dr. Powell for a second opinion evaluation and a determination of the amount of appellant's hearing loss. Dr. Powell, in his September 23, 2014 opinion, found that with regard to the left ear, using results for 500, 1,000, 2000, and 3,000 Hz for monaural hearing loss in the left ear of 55, 50, 80, and 90, respectively, these totals were added together to equal 275 and then divided by 4 to equal an average of 68.75. He then reduced the amount by the threshold fence of 25 dB, which resulted in 43.75, and multiplied this amount by 1.5 to find a 65.625 percent monaural hearing loss in the left ear.

On the right ear, he found that testing at 500, 1,000, 2,000, and 3,000 Hz revealed 60, 65, 75, and 95 respectively. Dr. Powell then added these figures together to equal 295 and divided by 4 to find an average threshold of 73.75, from which he deducted the threshold fence of 25 dB

⁵ See Federal (FECA Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ See A.M.A., *Guides* 250.

⁷ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁸ *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).

⁹ A.M.A., *Guides* 249.

which equaled 48.75, and multiplied this product by 1.5 to equal a 73.125 percent monaural loss. Dr. Powell then determined the binaural hearing loss and added 5 percent for tinnitus to equal a binaural hearing loss of 71.875 percent.

The Board finds that Dr. Powell properly explained how he calculated hearing impairment. Dr. Powell properly applied the A.M.A., *Guides* to arrive at the 71.875 percent binaural hearing loss. The Board finds that his report was thorough, detailed, and properly applied the A.M.A., *Guides*.¹⁰

FECA procedures relating to the evaluation of schedule awards state that the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percent of impairment.¹¹ Accordingly, OWCP referred appellant's case to an OWCP medical adviser. The OWCP medical adviser utilized the figures found by Dr. Powell with regard to hearing loss as found on the audiogram. However, while Dr. Powell had recommended that appellant be granted an additional award for tinnitus, OWCP's medical adviser neglected to factor into the calculation any loss for tinnitus or provide an explanation as to why he did not consider tinnitus in determining appellant's permanent binaural hearing impairment. The Board notes that regarding tinnitus, the A.M.A., *Guides* provide that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, up to five percent may be added for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹²

The Board finds that appellant has met his burden of proof for an increased schedule award to account for his tinnitus. In an examination for rating purposes Dr. Powell provided an extensive and well-rationalized opinion as to the extent of appellant's hearing loss. He provided examples in his report of activities of daily living impacted by the diagnosed tinnitus condition. The additional five percent award for tinnitus has factual support within the record as Dr. Powell provided specific incidents of the tinnitus impacting appellant's activities of daily life. Alternatively, the opinion of OWCP's medical adviser neglected, without any rationale for doing so, to provide an evaluation of appellant's impairment for tinnitus. Dr. Powell's rating report was based upon an accurate medical history following a comprehensive audiometric examination. Moreover, as noted, his rating report articulates a factual history for an award for tinnitus upon report of the condition's impact on his activities of daily living followed by a well-rationalized explanation of the basis for the tinnitus award. The opinion of OWCP's medical adviser made no mention of a rating for tinnitus despite its obvious existence in the record and within the opinion of Dr. Powell which he was reviewing.

The Board therefore finds that the opinion of Dr. Powell as to the extent of appellant's permanent binaural hearing loss is entitled to the weight of the medical evidence. The second opinion physician has provided a well-rationalized opinion as to the extent of permanent binaural

¹⁰ See *S.M.*, Docket No. 14-1668 (issued May 1, 2015).

¹¹ FECA Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6e (February 2013).

¹² See *D.W.*, Docket No. 14-931 (issued August 11, 2014).

hearing loss while OWCP's medical adviser failed to accurately address the diagnosed tinnitus and assign an impairment.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an increased schedule award of 5 percent in addition to the 67 percent impairment for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 21, 2015 is reversed and appellant shall be compensated for an increased schedule award of 5 percent, in addition to the 67 percent impairment for which he received a schedule award.

Issued: December 7, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board