

**United States Department of Labor
Employees' Compensation Appeals Board**

R.A., Appellant)
)
and)
)
DEPARTMENT OF THE AIR FORCE, AIR)
MOBILITY COMMAND, RANDOLPH AIR)
FORCE BASE, TX, Employer)

**Docket No. 15-138
Issued: March 13, 2015**

Appearances:
David G. Jennings, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 24, 2014 appellant, through counsel, filed a timely appeal from a September 30, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained more than 17 percent binaural hearing loss for which he received a schedule award. On appeal appellant's counsel argues that appellant is entitled to an additional five percent impairment for tinnitus.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 16, 2012 appellant, then a 56-year-old heavy mobile equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss as a result of high levels of employment-related noise exposure. He became aware of his condition and of its relationship to his employment on June 1, 1992. Appellant notified his supervisor on December 23, 2013. In support of his claim, he submitted a May 20, 2013 audiogram.

On June 14, 2014 appellant filed a claim for a schedule award (Form CA-7).

OWCP referred appellant, together with a statement of accepted facts (SOAF), to Dr. William R. Lomax, a Board-certified otolaryngologist, for a second opinion evaluation.² The SOAF noted that appellant was employed as a heavy mobile equipment mechanic from January 1990 to the present where he was exposed to noise from various pneumatic tools, chipping, needle guns, grinding, and running engines.

An audiogram was completed on July 28, 2014 which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 20, 20, 40, and 65 for the right ear and 15, 20, 45, and 65 for the left ear. Speech reception thresholds were 20 dB on the right and 20 dB on the left, while auditory discrimination scores were 88 percent bilaterally. Dr. Lomax, on a form report provided to him by OWCP, reported that appellant complained of tinnitus and hearing problems getting gradually worse since 1990. He diagnosed bilateral neurosensory hearing loss consistent with acoustic trauma and presbycusis. Dr. Lomax further noted that appellant's subjective tinnitus was secondary to the hearing loss. He stated that appellant's workplace noise exposure was sufficient as to intensity and duration to have caused the loss in question. Dr. Lomax opined that appellant's sensory neural hearing loss was caused by his federal employment-related noise exposure, noting that hearing loss due to presbycusis is calculated to be 10 dB at age 59. He stated that appellant had reached maximum medical improvement (MMI) and recommended hearing aids.

Applying the standard provided by the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*) to the July 28, 2014 audiometric data, Dr. Lomax calculated that appellant sustained 17 percent monaural hearing impairment in the right ear and 17 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 17 percent. On the form report, Dr. Lomax added five percent impairment for tinnitus, which impacted the ability to perform activities of daily living, for a total of 22 percent binaural hearing impairment (17 percent + 5 percent for tinnitus). On the Form CA-1332 OWCP provided a location to add up to five percent for tinnitus, on the final calculation page but did not designate a location to expand upon the basis for such rating.

² The Board notes that by decisions dated June 4 and July 18, 2014, OWCP suspended adjudication of appellant's case for failing to attend and obstructing an examination with Dr. Lomax. Subsequently, OWCP rescheduled appellant's examination for July 28, 2014.

³ A.M.A., *Guides* (6th ed. 2009).

On August 25, 2014 OWCP referred the case file to an OWCP district medical adviser (DMA) to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

On August 26, 2014 the DMA reviewed Dr. Lomax's otologic examination report and agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant sustained 17 percent binaural hearing loss.⁴ The DMA averaged appellant's left ear hearing levels of 15, 20, 45, and 65 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 36.25. He then subtracted a 25-dB fence and multiplied the balance of 11.25 by 1.5 to find 16.875 percent left ear monaural hearing loss. The DMA then averaged appellant's right ear hearing levels of 20, 20, 40, and 65 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 36.25. After subtracting out a 25-dB fence, he multiplied the remaining 11.25 balance by 1.5 to calculate a 16.875 percent right ear monaural hearing loss. The DMA calculated 17 percent binaural hearing loss by multiplying the right ear loss of 16.875 percent by 5, adding the 16.875 percent left ear loss and dividing this sum by 6.⁵ No percentage was added for tinnitus. The DMA noted the date of MMI as July 28, 2014 and authorized hearing aids.

By decision dated September 30, 2014, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. By decision dated September 30, 2014, it also granted appellant a schedule award for 17 percent binaural hearing loss. The award covered a period of 34 weeks from July 28 to September 20, 2014.

LEGAL PRECEDENT

The schedule award provision of FECA⁶ 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁷

⁴ *Id.*

⁵ The DMA calculated 16.875 percent binaural hearing loss which was rounded up to 17 percent. The Board notes that it is OWCP's policy to round the calculated percentage of impairment to the nearest whole number. *See L.B.*, Docket No. 14-479 (issued August 6, 2014); *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).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

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.⁸ 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.⁹

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.¹⁰ 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 binaural hearing impairment.¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹² OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹³

ANALYSIS

OWCP accepted appellant's claim for bilateral noise-induced hearing loss. The issue is whether appellant has more than a 17 percent binaural hearing loss for which he received a schedule award. The Board finds that the evidence of record establishes that he has a 22 percent binaural hearing loss.¹⁴

OWCP referred appellant, together with a statement of accepted facts, to Dr. Lomax, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on July 28, 2014 which revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 20,

⁸ See A.M.A., *Guides* 250.

⁹ 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).

¹⁰ See A.M.A., *Guides* 249.

¹¹ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹³ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

¹⁴ *C.W.*, Docket No. 13-1168 (issued October 23, 2013).

20, 40, and 65 for the right ear and 15, 20, 45, and 65 for the left ear. Speech reception thresholds were 20 dB on the right and 20 dB on the left, while auditory discrimination scores were 88 percent bilaterally. Dr. Lomax reported that appellant complained of years of hearing loss and tinnitus. He diagnosed bilateral neurosensory hearing loss and tinnitus, noting that appellant's subjective tinnitus was secondary to the hearing loss. Dr. Lomax opined that appellant's workplace noise exposure caused his bilateral neurosensory hearing loss.

Applying the June 28, 2014 audiometric data and using the sixth edition of the A.M.A., *Guides*, Dr. Lomax calculated that appellant sustained 17 percent monaural hearing impairment in the right ear and 17 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 17 percent and added 5 percent for tinnitus, for a total of 22 percent binaural hearing impairment (17 percent + 5 percent for tinnitus).¹⁵ Dr. Lomax stated that maximum medical improvement had been reached and recommended hearing aids.

OWCP then referred the medical evidence to an OWCP DMA, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.¹⁶ The DMA opined that appellant had a 17 percent binaural hearing loss under the sixth edition of the A.M.A., *Guides* based on the results of the June 28, 2014 audiogram and Dr. Lomax's second opinion report. He did not offer any opinion on appellant's diagnosed tinnitus.¹⁷

The Board finds that Dr. Lomax, the second opinion physician, properly evaluated appellant's hearing loss. Using the June 28, 2014 audiogram to calculate appellant's hearing loss in accordance with the A.M.A., *Guides*, Dr. Lomax averaged appellant's left ear hearing levels of 15, 20, 45, and 65 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 36.25. He then subtracted a 25-dB fence and multiplied the balance of 11.25 by 1.5 to find 16.875 percent left ear monaural hearing loss. Appellant's right ear hearing levels of 20, 20, 40, and 65 dB at 500, 1,000, 2,000, and 3,000 Hz, were then averaged to total 36.25. After subtracting out a 25-dB fence, he multiplied the remaining 11.25 balance by 1.5 to calculate a 16.875 percent right ear monaural hearing loss. He then calculated 17 percent binaural hearing loss by multiplying the right ear loss of 16.875 percent by 5, adding the 16.875 percent left ear loss and dividing this sum by 6.¹⁸

Dr. Lomax determined that appellant's tinnitus allowed another five percent award as permitted by the A.M.A., *Guides*. In a factually similar case, *C.W.*,¹⁹ Dr. Lomax was also the second opinion physician and opined summarily that a five percent award should be allowed for tinnitus as it impacted appellant's ability to perform activities of daily living. As in the present case, the DMA in *C.W.* offered no opinion regarding tinnitus. The Board found that appellant

¹⁵ *Supra* note 10.

¹⁶ *See Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹⁷ *Supra* note 14.

¹⁸ *Supra* note 10.

¹⁹ *Supra*, note 14.

was entitled to the additional five percent award for tinnitus. As in *C.W.*, the Board will grant appellant another five percent impairment for tinnitus.

Dr. Lomax determined that appellant sustained 22 percent binaural hearing loss. The Board finds that he properly evaluated the evidence of record. Dr. Lomax's report is entitled to the weight of the medical evidence.²⁰

CONCLUSION

The Board finds that appellant has established that he has a 22 percent permanent bilateral hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 13, 2015
Washington, DC

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

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

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

²⁰ *Supra* note 14.