

FACTUAL HISTORY

On November 22, 2013 appellant, then a 56-year-old aircraft mechanic leader, filed an occupational disease claim alleging that noise exposure at work caused bilateral hearing loss with tinnitus. His work was in close proximity to the flight line and he worked in a high noise mix facility which involved noise from pneumatic tools, hydraulic mules, and 60 air carts. Appellant was first aware of his hearing loss and that it was caused or aggravated by his employment on September 30, 1997. He submitted copies of his position description along with his annual hearing tests from 1997 onwards, which showed a progression in hearing loss.

On March 14, 2014 OWCP referred appellant, along with a statement of accepted facts, the medical record and a list of questions, to Dr. Stewart Barlow, Board-certified otolaryngologist, for a second opinion examination. In an April 4, 2014 report, Dr. Barlow stated that appellant's workplace exposure was significant as to intensity and duration to have caused the hearing loss in question. He diagnosed bilateral sensorineural high frequency hearing loss and tinnitus and opined that this condition was due to noise exposure at appellant's federal employment. Dr. Barlow explained that there was progressive hearing loss on audiogram. He found that appellant had tinnitus grade 4 and binaural hearing loss impairment 15.9 percent, which included tinnitus impairment of 4 percent. Dr. Barlow recommended hearing aids for both ears.

An April 4, 2014 audiogram performed on Dr. Barlow's behalf by Robert L. Eppens, an audiologist, reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) and revealed the following decibel losses: 25, 30, 40, and 45 for the right ear and 25, 25, 40, and 40 for the left ear respectively. Based on these results and in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th edition) (A.M.A., *Guides*), Dr. Barlow determined that appellant had an 11.25 percent monaural loss of the left ear and a 15.0 percent monaural loss of the right ear, which converted to an 11.9 percent binaural hearing loss, plus an additional 4 percent impairment due to employment-related tinnitus. He stated that appellant needed hearing aids to help improve his hearing and get relief from his tinnitus. In an April 4, 2014 letter, Dr. Barlow stated that the tinnitus appellant experienced made it difficult to concentrate and hard for him to hear, which made him feel angry. He noted that sleeping was a problem due to the head noises and that appellant felt as though he could not escape the ringing. Social activities were negatively affected, which led to great frustration and made it difficult to enjoy life. Appellant felt the tinnitus interfered with household responsibilities and negatively affected his relationships with family and friends. Dr. Barlow opined that appellant's tinnitus should be considered part of his hearing loss claim. Copies of the April 4, 2014 audiograms were included.

In a May 19, 2014 decision, OWCP accepted appellant's claim for bilateral hearing loss and bilateral tinnitus.

On May 19, 2014 OWCP requested that its medical adviser review the medical evidence of record and statement of accepted facts, for a schedule award impairment determination.

On June 10, 2014 appellant filed a Form CA-7 claim for a schedule award based on his bilateral hearing loss and bilateral tinnitus.

In an August 14, 2014 report, an OWCP medical adviser, Dr. Morley Slutsky, Board-certified in occupational medicine, reviewed Dr. Barlow's report and April 4, 2014 audiometric test results. Based on Dr. Barlow's audiometric findings, the medical adviser found that appellant had 11.25 percent monaural hearing in the left ear and 13.13 percent monaural hearing in the right ear.² The medical adviser calculated that appellant's award would be greater for a binaural award, rather than monaural awards and concluded that appellant had 11.6 percent sensorineural binaural hearing loss. He stated that appellant was entitled to an additional award for tinnitus; therefore, the final hearing loss rating was equal to 11.6 percent binaural hearing loss, plus 4 percent impairment for tinnitus, for a 15.6 percent binaural impairment. The medical adviser determined that the date of maximum medical improvement was April 4, 2014, the date of Dr. Barlow's examination, and authorized hearing aids.

By decision dated August 20, 2014, OWCP granted appellant a schedule award for 12 percent binaural hearing loss. The award covered the period from April 4 through September 18, 2014, for a total of 24 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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 and averaged.⁷ The fence of 25 decibels is then 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss is determined by

² The medical adviser reported testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed the following decibel losses: 25, 30, 40, and 45 for the right ear and 25, 25, 40, and 40 for the left ear respectively. OWCP medical adviser incorrectly noted that at the frequency level of 1,000 cps, appellant had 25 as opposed to 30 monaural hearing loss of right ear.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁷ A.M.A., *Guides* 250 (6th ed.).

⁸ *Id.*

⁹ *Id.*

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.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral hearing loss and bilateral tinnitus due to noise. It developed the claim by referring appellant to Dr. Barlow. On April 4, 2014 Dr. Barlow examined appellant and an audiogram was obtained on the referral physician's behalf. He found, using OWCP's standard procedures, that appellant's noise exposure in his federal employment was sufficient to cause binaural hearing loss and bilateral tinnitus. The April 4, 2014 audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 cps and recorded decibel losses of 25, 30, 40, and 45 respectively in the right ear. The total decibel loss in the right ear is 140. When divided by 4, the result is an average hearing loss of 35 decibels. The average of 35 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 10 decibels, which when multiplied by the established factor of 1.5 computes 15 percent hearing loss in the right ear.¹²

OWCP medical adviser properly determined that appellant was entitled to greater amount of compensation if the award was for binaural, rather than monaural hearing loss.¹³ The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000, and 3,000 cps and recorded decibel losses of 25, 25, 40, and 40 respectively. The total decibel loss in the left ear is 130. When divided by 4, the result is an average hearing loss of 32.5 decibels. The average hearing loss of 32.5 is reduced by the fence of 25 decibels to 7.5, which when multiplied by the established factor of 1.5 computes 11.25 percent hearing loss in the left ear. To determine the binaural loss, the lesser loss of 11.25 percent is multiplied by 5, to yield 56.25, and is then added to the greater loss of 15 percent. The total for this loss is then 71.25, which is divided by 6 to

¹⁰ *Id.* at 251.

¹¹ *Horace L. Fuller*, 53 ECAB 775 (2002).

¹² While OWCP medical adviser incorrectly used a value of 25 for the 1,000 frequency for the right ear as opposed to a value of 30, this amounts to harmless error as the hearing impairment calculation still rounds up to the binaural loss of 12.0 percent, which appellant received.

¹³ It is well established that, if calculations based on the monaural loss for each ear would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used. *See Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001). In this case, appellant's compensation is greater under the procedures used for calculating binaural loss. The maximum number of weeks of compensation for binaural hearing loss is 200 weeks. *See* 5 U.S.C. § 8107(c)(13)(B). Appellant's monaural hearing loss of the left ear is 11 percent, whereas his monaural hearing loss of the right ear is 15 percent. The maximum number of weeks of compensation for monaural hearing loss is 52 weeks. *See* 5 U.S.C. § 8107(c)(13)(A). Eleven percent of 52 weeks equals 5.72 weeks of compensation, and fifteen percent of 52 weeks equals 7.8 weeks. The 12 percent binaural hearing loss award of 14 weeks of compensation is therefore the greater award.

equal the binaural loss of 11.875 percent, which is rounded up to equal the binaural loss of 12.0 percent, which appellant received.¹⁴

The Board has recognized that the A.M.A., *Guides* allow for up to an additional five percent impairment for tinnitus. Specifically, the A.M.A., *Guides* provide that if the 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.¹⁵

OWCP has accepted that appellant sustained tinnitus and the medical adviser noted and agreed with Dr. Barlow's finding of an additional four percent bilateral hearing loss due to tinnitus. Both Dr. Barlow and OWCP medical adviser found that the tinnitus impacted appellant's ability to perform activities of daily living and provided an additional four percent impairment due to tinnitus. Thus, the impairment rating for an additional four percent impairment for tinnitus is substantiated in this case and the impairment award must take into account the tinnitus rating.

As appellant is entitled to a schedule award for 16 percent binaural hearing loss, but only received a schedule award for 12 percent binaural hearing loss, he is entitled to an additional 4 percent impairment award. Accordingly, the August 20, 2014 decision shall be modified to reflect appellant's entitlement to a schedule award for 16 percent binaural hearing loss.

CONCLUSION

The Board finds that appellant has established that he sustained hearing loss greater than 12 percent. The record substantiates that he has 16 percent binaural hearing loss and an additional award for hearing loss due to tinnitus is therefore awarded on this appeal.

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (January 2010). *See also* R.C., Docket No. 14-502 (issued July 2, 2014). OWCP procedures provide that, in computing hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded up from .50.

¹⁵ A.M.A., *Guides* 249 (6th ed. 2008) Section 11.2b, Tinnitus. *See* L.N., Docket No. 14-1168 (November 13, 2014).

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: March 12, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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