

bilateral hearing loss as a result of high levels of employment-related noise exposure. He first became aware of his condition and of its relationship to his employment on March 27, 2013. Appellant retired from his federal employment on January 10, 2014. He described his federal employment duties from 2002 to 2013 where he was exposed to employment-related noise from heavy equipment and gunfire on numerous occasions over the course of his career. From 2002 to 2005 appellant worked as a firearms instructor until he returned to the Office of Investigations as a special agent; hearing protection was provided. In May 2008, he was involved in a shooting in which hearing protection was not available.

By letters dated May 27 and 30, 2014, the employing establishment described the various sources of noise appellant was exposed to during the course of his federal employment.

Hearing conservation data and audiology reports dated March 27, 2013 and April 24, 2014 were submitted. In an April 24, 2014 report, Susan A. Richmond, an audiologist, reported that appellant had moderate-to-severe high-frequency hearing loss.

OWCP referred appellant, together with a statement of accepted facts, to Dr. David T. Miyama, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on August 19, 2014 which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 10, 10, 10, and 30 for the right ear and 15, 10, 25, and 70 for the left ear. Speech reception thresholds were 55 dB bilaterally while auditory discrimination scores were 100 percent bilaterally. Dr. Miyama reported that appellant had a long-standing history of work-related noise exposure, noting his employment as a shooting instructor for approximately 12 years. He explained that appellant had some subjective trouble with high-frequency noises. Dr. Miyama noted no tinnitus, vertigo, otalgia, or otorrhea. He diagnosed mildly asymmetric severe high-frequency sensorineural hearing loss with excellent discrimination and normal tympanograms. Dr. Miyama explained that appellant's hearing loss pattern was consistent with work-related noise exposure and recommended hearing aids.

By decision dated October 6, 2014, OWCP accepted appellant's claim for bilateral hearing loss.²

On October 6, 2014 OWCP referred a statement of accepted facts and the case file to a DMA to determine the extent of appellant's hearing loss and permanent impairment due to employment-related noise exposure.

On November 6, 2014 Dr. David N. Schindler, a Board-certified otolaryngologist, reviewed Dr. Miyama's examination and agreed that appellant's bilateral high-frequency neurosensory hearing loss was caused by employment-related noise exposure. He noted that the record contained no preemployment audiograms; the earliest audiogram of record was dated March 27, 2013 which revealed bilateral high-frequency hearing loss. Subsequent audiograms

² OWCP informed appellant that the medical evidence of record established that he would benefit from hearing aids. It further advised him that the evidence established a permanent impairment as a result of employment-related hearing loss and that the case was being forwarded to an OWCP district medical adviser (DMA) to assess the percentage of permanent impairment. OWCP instructed appellant to file a Form CA-7 so that a schedule award could be processed.

revealed a progressive high-frequency hearing loss. Dr. Schindler reported that the August 19, 2014 audiogram showed speech reception thresholds and speech discrimination scores consistent with the pure tones as recorded.

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 August 19, 2014 audiometric data, Dr. Schindler calculated that appellant sustained 0 percent monaural hearing impairment in the right ear and 7.5 percent monaural hearing impairment in the left ear. He calculated a binaural hearing impairment of 1.3 percent. Dr. Schindler concluded that hearing aids were authorized and noted the date of maximum medical improvement (MMI) as August 19, 2014.

On January 28, 2015 appellant filed a claim for a schedule award (Form CA-7).

Subsequently, appellant submitted a November 24, 2014 audiological evaluation and report from Dr. A.J. Emami, a Board-certified otolaryngologist and an associate of Dr. Miyama. An audiogram was completed on that same date which revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 10, 10, and 35 for the right ear and 15, 15, 10, and 70 for the left ear. Dr. Emami reported that appellant's pure-tone testing revealed high-frequency hearing loss bilaterally, 100 percent discrimination scores, and normal tympanometry. He noted that appellant's slight degree of asymmetry in his high-frequency hearing loss had essentially resolved, he was medically stable as far as his hearing loss was concerned, and his high-frequency hearing loss was permanent.

By decision dated August 4, 2015, OWCP granted appellant a schedule award for 8 percent permanent left ear hearing loss. The date of maximum medical improvement (MMI) was determined to be August 19, 2014, the date of the audiogram performed with Dr. Miyama's examination. The award covered a period of 4.16 weeks from August 19 through September 17, 2014 and the weekly pay was computed at the 75 percent augmented rate for employees with dependents.

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 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*

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. §§ 8101-8193.

(6th ed. 2009), has been adopted by OWCP for evaluating schedule losses 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 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.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, 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

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.⁸ OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.⁹

ANALYSIS

The issue is whether appellant has more than eight percent monaural left ear hearing loss impairment.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Miyama, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on August 19, 2014 which revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 10, 10, and 30 for the right ear and 15, 10, 25, and 70 for the left ear. Dr. Miyama diagnosed severe high-frequency sensorineural hearing loss as a result of federal workplace noise exposure. Hearing aids were recommended.

⁵ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013) and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010);.

⁶ See *supra* note 3 at 250.

⁷ 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).

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

⁹ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

OWCP properly referred the medical evidence to Dr. Schindler, an OWCP DMA, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.¹⁰

On November 6, 2014 Dr. Schindler properly applied the findings of the August 19, 2014 audiogram to calculate 0 percent monaural hearing impairment in the right ear, 7.5 percent monaural hearing impairment in the left ear, and 1.3 percent binaural hearing impairment.¹¹ He averaged appellant's right ear hearing levels of 10, 10, 10, and 30 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 15. Because this average is below the fence of 25 decibels, appellant is deemed to have no right ear impairment in his ability to hear every day sounds under everyday listening conditions.¹² This does not mean that he has no right ear hearing loss. It means that the extent or degree of loss is insufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational right ear hearing loss did not cross that threshold. Thus, the DMA applied the proper standard to the August 19, 2014 audiogram to determine that appellant's right ear hearing loss was not ratable.

Dr. Schindler then averaged appellant's left ear hearing levels of 15, 10, 25, and 70 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 30. After subtracting a 25 dB fence, he multiplied the remaining 5 balance by 1.5 to calculate a 7.5 percent left ear monaural hearing loss.¹³ Using the A.M.A., *Guides*, he calculated 1.3 percent binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the greater 7.5 percent left ear loss, and dividing this sum by 6.¹⁴ Thus, the Board finds that Dr. Schindler properly applied the A.M.A., *Guides* in calculating that appellant sustained 7.5 percent monaural left ear hearing loss and 1.3 percent binaural hearing loss.¹⁵

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.¹⁶ FECA provides that a claimant is entitled to 52 weeks of compensation for a 100 percent loss of hearing in one ear and 200 weeks' compensation for 100 percent hearing loss in both ears. OWCP used an 8 percent left ear monaural hearing loss impairment rating (rounded up from 7.5 percent).¹⁷ Multiplying eight percent by the 52 weeks provided for monaural hearing loss results totaled 4.16 weeks of compensation. With respect to the 1 percent binaural hearing loss impairment (rounded down from 1.3 percent), OWCP

¹⁰ See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹¹ *Id.*

¹² See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

¹³ *Supra* note 3 at 249.

¹⁴ *Id.* at 250.

¹⁵ See *Linda Beale*, 57 ECAB 429 (2006).

¹⁶ 5 U.S.C. § 8107.

¹⁷ The policy of OWCP is to round the calculated percentage of impairment to the nearest whole point. Results should be rounded down for figures less than .5 and up for .5 and over. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (January 2010); *Carolyn Sellers*, 50 ECAB 393, 394 (1999).

determined that multiplying 1 percent by the 200 weeks provided for binaural hearing loss would result in a total of 2 weeks of compensation. The Board notes that if the allowance for monaural hearing loss would be greater than that for binaural hearing loss, the claimant should receive the benefit of the more favorable allowance. Thus, OWCP properly determined that appellant would receive greater compensation for his monaural left ear hearing loss rather than for his binaural hearing loss.¹⁸ The Board finds that OWCP properly determined the number of weeks of compensation as 4.16.¹⁹

With respect to the specific period for payment of the 4.16 weeks of compensation, this is based on the date of MMI which occurred on August 19, 2014. The Board finds that OWCP properly relied on Dr. Schindler's finding and determined that appellant reached MMI on August 19, 2014, the date of Dr. Miyama's examination. The date of MMI was based on the date of the second opinion examination and audiological evaluation. The determination of the date for MMI ultimately rests with the medical evidence²⁰ and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.²¹ Thus, the Board finds that OWCP properly determined the period of the award for 4.16 weeks from August 19 through September 17, 2014.

Appellant's concern on appeal is the date of MMI and period of the award, arguing that his hearing impairment is permanent. OWCP properly determined that August 19, 2014, the date of Dr. Miyama's report constituted the date of maximum medical improvement. There is no evidence in this case that moving the period of the award to a later date would gain appellant additional compensation.²² Section 8107 of FECA provides only a finite amount of compensation for permanent impairment. Appellant is entitled to 4.16 weeks of compensation for the hearing loss in his left ear. The amount payable under the schedule provision does not take into account the effect that the impairment may have on employment opportunities, sports, hobbies, or other lifestyle activities.²³ This is true regardless of when the period of the award begins.²⁴

¹⁸ *T.H.*, Docket No. 07-965 (issued August 6, 2007).

¹⁹ The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents, as in this case, as defined in FECA, the employee is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent for a total of 75 percent of monthly pay. 5 U.S.C. § 8110(b). The number of weeks of compensation for a schedule award is determined by the compensation schedule found in section 8107(c) of FECA. 5 U.S.C. § 8107(c); *Dennis R. Stark*, Docket No. 05-1826 (issued January 10, 2006).

²⁰ *L.H.*, 58 ECAB 561 (2007).

²¹ *Mark Holloway*, 55 ECAB 321, 325 (2004).

²² *Juan C. Elizondo*, Docket No. 99-224 (issued May 17, 2000).

²³ *See Ruben Franco*, 54 ECAB 496 (2003).

²⁴ *Id.* (explaining that the amount of compensation paid in hearing loss cases is generally not adversely affected by the date that the period of the award begins).

Following Dr. Schindler's schedule award determination, appellant submitted a November 24, 2014 audiological examination and report from Dr. Emani. The Board notes that the findings of the November 24, 2014 audiogram do not establish entitlement to an increased schedule award and actually provide support for a lesser impairment rating. The decibel losses for the right ear were again below the fence of 25 dBs, and would therefore result in a zero percent permanent impairment rating. While sum loss of 110 dBs for the left ear, when averaged and reduced by the fence, would result in a total loss of hearing of four percent. The evidence of record therefore does not substantiate a greater loss than the eight percent award for loss of hearing of the left ear which appellant has received.

Moreover, the later MMI date would not be beneficial to appellant or result in a greater compensation amount. The Board notes that appellant would be entitled to 4.16 weeks of compensation, regardless of whether the schedule award began on August 19, 2014 or November 24, 2014.²⁵ Thus, the Board finds that the date of MMI was properly selected as August 19, 2014 and Dr. Emami's November 24, 2014 report does not establish that appellant is entitled to additional compensation for his established hearing loss.²⁶

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 did not establish that he sustained greater than eight percent monaural left ear hearing loss for which he received a schedule award.

²⁵ *T.K.*, Docket No. 12-271 (issued June 21, 2012).

²⁶ *W.P.*, Docket No. 09-2094 (issued April 22, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board