

FACTUAL HISTORY

On August 5, 1999 appellant, then a 35-year-old laundry equipment repairer, filed an occupational disease claim (Form CA-2) alleging hearing loss caused by noise exposure at his federal employment. OWCP accepted that appellant sustained binaural hearing loss on March 27, 2000, but was granted an award only for eight percent monaural hearing loss in the left ear as the hearing loss in the right ear was not ratable at that time. The award ran for 4.16 weeks from January 24 to February 22, 2000. Appellant retired from the employing establishment on June 30, 2014.

On June 11, 2014 appellant filed a Form CA-7 claim for an increased schedule award based on additional hearing loss. He submitted a June 11, 2014 audiogram along with his previous audiograms dating back to 1990.

OWCP referred appellant for a second opinion examination with Dr. Anwar Mumtaz, a Board-certified otolaryngologist. In a March 16, 2015 report, Dr. Mumtaz diagnosed bilateral sensorineural hearing loss secondary to noise exposure from his federal employment. He noted that there were no other contributing factors, no advanced age-related presbycusis, and no sudden shift in higher frequencies.

A March 16, 2015 audiogram performed on Dr. Mumtaz' behalf tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 15, 35, 50, and 55 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 10, 30, 30, and 50. Based on these results and in accordance with American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*), Dr. Mumtaz determined that appellant had 22.625 percent monaural hearing loss of the left ear which included a two percent rating for tinnitus and 9.5 percent monaural hearing loss of the right ear which included a two percent rating for tinnitus. He found this equaled an 11.687 percent binaural hearing loss. Appellant related to Dr. Mumtaz that tinnitus was 2-2.5 out of 5 in general and was only bothering him when it was quiet during the night. Dr. Mumtaz recommended hearing aids.

On May 14, 2013 Dr. Duane J. Taylor, an OWCP medical adviser Board-certified in otolaryngology, reviewed Dr. Mumtaz' report and found that appellant had established only 7.5 percent monaural hearing loss in the right ear and 20.6 percent monaural hearing loss in the left ear. He agreed with Dr. Mumtaz' finding of 11.68 percent binaural hearing loss which included 2 percent for tinnitus. He determined that the date of maximum medical improvement was March 16, 2015, the date of the most recent audiogram.

By decision dated June 18, 2015, OWCP granted appellant a schedule award for an additional four percent binaural hearing loss to equal 12 percent binaural hearing loss, as appellant had previously been paid an award for eight percent monaural hearing loss. The increased award was for eight weeks of compensation and ran from March 6 to April 30, 2015.

On appeal appellant argues that it was not explained how the four percent impairment was calculated or why the compensation period was only from March 6 through April 30, 2015.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the decibel losses at each frequency are added up and averaged.⁷ Then, the fence of 25 decibels is deducted. 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

FECA, and its implementing regulations, provide for the reduction of compensation for subsequent injury to the same scheduled member.⁹ Benefits payable under 5 U.S.C. § 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹⁰

ANALYSIS

On March 27, 2000 appellant received a schedule award for 8 percent monaural hearing loss of the left ear. At that time he did not have ratable hearing loss in the right ear. On June 11, 2014 appellant requested an increased schedule award for binaural hearing loss.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009); *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).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 3.700.4.b (January 2010).

⁷ *Id.*

⁸ *See Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁹ 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

¹⁰ 20 C.F.R. § 10.404(c)(1), (c)(2).

OWCP medical adviser, Dr. Taylor, applied OWCP's standardized procedures to the March 16, 2015 audiogram performed for the second opinion physician, Dr. Mumtaz. Testing at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 15, 35, 50, and 55 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 10, 30, 30, and 50. These decibels were totaled at 155 for the left ear and 120 for the right ear, then divided by 4 to obtain an average hearing loss at those cycles of 38.75 and 30 decibels respectively. The averages of 38.75 and 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 13.75 and 5, which was multiplied by the established factor of 1.5 to compute a 20.625 percent loss of hearing for the left ear and 7.5 percent loss of monaural hearing for the right ear. Dr. Taylor then multiplied the 7.5 percent loss in the right ear (the hearing impairment of the better ear) by five, then added it to the 13.75 percent loss in the left ear (the hearing impairment of the poor ear) and divided the sum by 6 to calculate appellant's binaural hearing loss at 9.68 percent. He then added 2 percent impairment for tinnitus for 11.68 percent binaural hearing loss.¹¹ This was rounded to 12 percent binaural impairment.¹² From the 12 percent binaural impairment, OWCP subtracted the previously awarded eight percent monaural impairment, to find that appellant was entitled to compensation for four percent binaural impairment. The Board finds that the manner in which OWCP subtracted the prior award is in error.

The Board has held that, when determining additional binaural hearing loss after previously awarding for monaural hearing loss, OWCP should convert the monaural impairment to binaural impairment and then deduct that value from the newly determined binaural impairment.¹³ OWCP had previously awarded appellant eight percent left ear monaural impairment and found there to be no ratable impairment for the right ear. The medical adviser should have taken the lesser hearing loss of 0 and multiplied it by 5 and added this figure to the greater loss (eight percent) and divided by 6 which would have resulted in a hearing loss of 1.33 rounded down to one percent binaural loss.¹⁴ That one percent binaural hearing loss should have then been deducted from the additional 12 percent binaural hearing loss calculation to provide an increased binaural hearing loss of 11 percent.

The maximum number of weeks of compensation for hearing loss in both ears is 200 weeks.¹⁵ The medical evidence of record establishes that appellant has a total of 12 percent binaural hearing loss. Twelve percent of 200 weeks is 24 weeks of compensation. As appellant previously received 4.16 weeks of compensation under the March 27, 2000 schedule award and

¹¹ The Board notes that the medical adviser properly added two percent impairment for tinnitus to the binaural impairment rating, as it has been established that up to five percent may be added to a measurable binaural hearing impairment. *R.R.*, Docket No. 12-1840 (issued February 14, 2013). Dr. Mumtaz, in his March 16, 2015 report, added two percent for tinnitus to both the left and right monaural impairment values then calculated the binaural impairment. The Board notes that Dr. Mumtaz' method results in the same outcome as adding tinnitus to the binaural impairment value.

¹² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (January 2010) (fractions should be rounded down from .49 or up from .50).

¹³ See *James Turner.*, Docket No. 05-238 (issued January 24, 2006); see generally *R.R.*, Docket No. 14-2031 (issued March 9, 2015).

¹⁴ See generally *A.M.A., Guides* 251.

¹⁵ 5 U.S.C. § 8107(c)(13)(B).

an additional 8 weeks of compensation under the June 18, 2015 schedule award, appellant is entitled to an additional 11.84 weeks of compensation.

On appeal appellant disputes the date on which the period of the award begins. He believes the award should have begun on an earlier date. In hearing loss cases, the period covered by a schedule award typically commences on the date of the medical examination and audiogram upon which OWCP based the schedule award.¹⁶ This is generally referred to as the date of maximum medical improvement. Moving the period of the award back in time will not gain appellant additional compensation. Section 8107 of FECA provides only a finite amount of compensation for permanent impairment.¹⁷

CONCLUSION

The Board finds that appellant has established more than four percent additional binaural hearing loss for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 11, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁶ See generally *Franklin L. Armfield*, 28 ECAB 445 (1977) (discussing when the period of the award should begin in hearing loss cases).

¹⁷ See *P.F.*, Docket No. 07-730 (issued August 22, 2007).