

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

B.B., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, Midwest City, OK, Employer**

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**Docket No. 16-0512
Issued: May 17, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2016 appellant filed a timely appeal from an August 31, 2015 merit 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 the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he has more than 21 percent monaural (left ear) loss of hearing for which he received a schedule award; and; (2) whether OWCP used the proper pay rate in calculating appellant's schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant generally asserts that he is entitled to a greater award, and that OWCP used an incorrect pay rate.

FACTUAL HISTORY

On March 17, 2014 appellant, then a 60-year-old sheet metal mechanic (aircraft) filed an occupational disease claim (Form CA-2), alleging that working 29 years in a noise hazard environment caused permanent hearing loss. In letters dated April 2, 2014, OWCP informed appellant of the information needed to support his claim and asked the employing establishment to respond regarding noise exposure.

Appellant submitted an employment history, noting that he began working at the employing establishment in 1981. He submitted employing establishment audiograms dated from 1986 to 2012 completed as part of a hearing conservation program.² On October 5, 1995 appellant had surgery to repair a ruptured tympanic membrane of the left ear.

In September 2014 OWCP referred appellant to Dr. Richard B. Dawson, a Board-certified otolaryngologist, for a second opinion evaluation. In an October 7, 2014 report, Dr. Dawson noted a history of noise exposure at work beginning in 1981 and his review of the statement of accepted facts and audiometric records dating from 1986. He noted the 1995 left ear surgery and advised that workplace noise exposure was sufficient to cause hearing loss. Dr. Dawson described ear examination findings. The audiogram, performed on October 7, 2014 reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following: right ear 10, 15, 25, and 40 decibels; left ear 30, 30, 45, and 50 decibels. Dr. Dawson advised that tinnitus was not present; however, hearing aids were recommended. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ appellant had 0 percent monaural loss of the right ear and 21 percent monaural loss of the left ear, or 4 percent binaural hearing loss.

On December 17, 2014 OWCP accepted binaural sensorineural hearing loss.

In a report dated December 19, 2014, Dr. Ronald H. Blum, an OWCP medical adviser, reviewed Dr. Dawson's report and the October 7, 2014 audiogram. He advised that the date of maximum medical improvement was October 7, 2014. The medical adviser agreed with Dr. Dawson's monaural calculations for each ear. He, however, indicated that the physician did not properly calculate the binaural hearing loss, finding it to be 3.4 percent.

On March 9, 2015 appellant filed a schedule award claim (Form CA-7). OWCP obtained pay rate information from the employing establishment which clarified that appellant had a fixed 40-hour workweek at an hourly wage of \$26.49 or \$1,063.17 per week.

² The most recent employing establishment audiogram dated May 21, 2012, signed by an audiologist, demonstrated testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following: right ear 10, 15, 25, and 40 decibels; left ear 30, 30, 45, and 50 decibels, respectively.

³ A.M.A., *Guides* (6th ed. 2009).

By decision dated August 31, 2015, appellant was granted a schedule award for 21 percent impairment for hearing loss of one ear (left), to run from October 7 to December 22, 2014. The compensation rate was based on a weekly pay of \$1,063.17 at the 3/4 or 75 percent augmented compensation rate, for total compensation of \$8,707.36, paid in full.⁴

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA,⁵ and its implementing federal regulations,⁶ 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.⁷ For decisions issued after May 1, 2009, the sixth edition is to be used.⁸

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 and averaged.⁹ 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.¹⁰ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹¹ 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.¹² The Board has concurred in OWCP’s adoption of this standard for evaluating hearing loss.¹³

⁴ A schedule award calculator and work sheets are found in the case record.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ 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).

⁹ *Supra* note 3 at 250.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 251.

¹³ *Horace L. Fuller*, 53 ECAB 775 (2002).

It is well established that, if calculations based on the monaural hearing loss would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used.¹⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained binaural hearing loss due to noise exposure at work and granted him a schedule award for 21 percent left ear, monaural, loss of hearing based on the October 7, 2014 report of Dr. Dawson, who provided a second opinion evaluation for OWCP, as reviewed by the OWCP medical adviser.

In the October 7, 2014 report, Dr. Dawson noted examination findings and reviewed an October 7, 2014 audiogram that was obtained on his behalf. Using OWCP's standard procedures described above, he advised that appellant's employment-related noise exposure did not cause a ratable hearing loss on the right but was sufficient to cause 21 percent loss on the left. The October 7, 2014 audiogram tested frequency levels of 500, 1,000, 2,000, and 3,000 decibels and reflected losses of 30, 30, 45, and 50 decibels respectively on the left, for a total decibel loss of 155, and losses of 10, 15, 25, and 40 decibels on the right, for a decibel loss of 90.¹⁵

Following OWCP procedures described above, the decibel total of 90 for the right ear, when divided by 4, yielded an average of 22.5, which was less than the fence of 25, for a 0 percent impairment of the right ear. Therefore, appellant's right ear impairment was not ratable. For the left ear, dividing the total decibel loss of 155 by 4 resulted in an average hearing loss of 38.75 decibels. This average was reduced by 25 decibels, yielding a 13.75 loss which, when multiplied by 1.5, yielded a 20.625 monaural loss on the left. OWCP properly rounded this fraction up to reflect a 21 percent impairment of the left ear.¹⁶ The OWCP medical adviser supported Dr. Dawson's calculations and conclusions regarding the ratable monaural loss of the left ear.

The record also includes employing establishment audiometric test results from 1986 to 2012. These, however, do not provide support for any greater impairment because there is no evidence that appellant underwent examination by a physician, that the audiometric testing was performed by a certified audiologist, or that all the equipment used for testing met the required standards.¹⁷ Moreover, the most recent employing establishment report was dated May 21, 2012, more than two years prior to the October 7, 2014 audiogram and more than three years prior to the August 31, 2015 schedule award. Thus, there is no probative medical evidence showing that appellant had greater monaural (left ear) hearing loss than 21 percent.

¹⁴ *Reynoldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁵ The decibel total of 80 on the right, when divided by 4, yields an average of 20, which is less than the fence of 25, for a 0 percent impairment of the right ear.

¹⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2)(b) (January 2010).

¹⁷ *See id.* at Chapter 3.600 Exhibit 4 (September 1996).

While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both,¹⁸ as noted above, if calculations based on the monaural hearing loss would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used.¹⁹ In this case, Dr. Dawson found 4 percent binaural impairment, whereas the OWCP medical adviser found a 3.4 percent binaural impairment, indicating that Dr. Dawson had rounded early in the binaural calculation, rather than at the end. Nonetheless, neither a binaural loss of 3.4 percent nor 4 percent represents an award greater than the 21 percent monaural loss awarded for appellant's left ear, for 76.44 days or approximately 10.92 weeks of compensation. A 3.4 percent binaural hearing loss yields 6.8 weeks of compensation, and 4 percent binaural hearing loss yields eight weeks of compensation.

Appellant, therefore, did not establish an impairment greater than the 21 percent monaural (left ear) hearing loss for which he received a schedule award.

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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of monthly rate.²⁰ Section 8101(4) provides that "monthly pay" means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.²¹ The compensation rate for schedule awards is the same as compensation for wage loss.²²

OWCP procedures provide methodology for computing weekly pay on an annual, daily and hourly basis.²³ Regarding hourly pay, the procedure manual provides, "For regular [f]ederal employees, the amount shown is multiplied by 2087 (by administrative determination, the number of hours in a full work year based on a 40-hour work week). This figure is then divided by 52."²⁴

¹⁸ 5 U.S.C. § 8107(c)(13).

¹⁹ *Supra* note 14.

²⁰ *See* 5 U.S.C. §§ 8105-8107.

²¹ *Id.* at § 8101(4).

²² *See* 20 C.F.R. § 10.404(b); *K.H.*, 59 ECAB 495 (2008).

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.10 (March 2011).

²⁴ *Id.* at Chapter 2.900.10.c.(2).

ANALYSIS -- ISSUE 2

Appellant worked a 40-hour week. His hourly wage, as shown on notification of personnel action (Form 50) effective June 1, 2014, was \$26.49. In calculating appellant's schedule award pay rate, OWCP relied on its procedures which provide a formula for calculating a regular federal employee's pay rate for compensation purposes which is based on a 40-hour workweek or 80-hour pay period. Section 2.900.7.c(2) provides that an employee's hourly pay rate is multiplied by 2087 annual work hours, then divided by 52 weeks, to result in a 40-hour pay period.²⁵ To calculate appellant's weekly pay rate for schedule award compensation purposes, OWCP multiplied his hourly rate of \$26.49 by 2087 hours for an annual rate of \$55,284.63, which was divided by 52, yielding a weekly pay rate of \$1,063.165, rounded up to \$1,063.17. The Board finds that this calculation was mathematically correct and in accordance with OWCP procedures for calculating a federal employee's compensation.²⁶

The Board notes that on appeal appellant forwarded an earnings and leave statement for the pay period ending October 4, 2014. This showed an hourly rate of \$26.49 with regular pay of \$2,119.20, based on an 80-hour, 2-week period. The statement also included four hours of overtime pay. Section 8114(e)(1) of FECA provides that, in computing an employee's pay rate for compensation purposes, overtime pay is not included.²⁷

The Board finds that OWCP properly calculated appellant's pay rate for schedule award purposes.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 5 U.S.C. § 8114(e)(1); see *Calvin E. King*, 51 ECAB 394 (2000).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than 21 percent monaural (left ear) loss of hearing for which he received a schedule award, and that OWCP used the proper pay rate in calculating appellant's schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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