

FACTUAL HISTORY

On July 24, 2014 appellant, then a 53-year-old human resources officer, filed an occupational disease claim (Form CA-2) alleging hearing loss as a result of high levels of noise exposure from military and civilian equipment. He became aware of his condition and of its relationship to his employment on September 10, 2008. In a letter of the same date, appellant explained that his claim was based on additional hearing loss incurred since September of 2008 due to hazardous noise conditions related to his employment.²

OWCP referred appellant to Dr. Dennis G. Pappas, a Board-certified otolaryngologist, for a second opinion evaluation. In a December 4, 2014 report, Dr. Pappas diagnosed appellant with sensorineural hearing loss. He opined that appellant's hearing loss was due in part to noise exposure encountered in appellant's civilian employment. Audiometric testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: left ear 55, 45, 50, and 55 decibels; right ear 50, 40, 30, and 50 decibels. Dr. Pappas recommended that appellant continue to wear a hearing aid.

OWCP forwarded Dr. Pappas' report to a district medical adviser (DMA) for review on January 12, 2015. In a January 13, 2015 report, the DMA calculated that appellant had a binaural hearing loss of 28 percent. He authorized hearing aids.

By decision dated January 15, 2015, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On January 23, 2015 appellant filed a claim for a schedule award (Form CA-7).

By letter dated January 23, 2015, OWCP noted that it had not received sufficient evidence to expand appellant's claim to include tinnitus. It requested that appellant submit additional evidence.

In a report dated March 5, 2015, Dr. Pappas related that appellant had a history of noise exposure from his work and has filed previous hearing loss claims in 2001 and 2007 and in 2014. He also noted that despite hearing aid use, appellant's tinnitus continued in both ears. Dr. Pappas specifically related that "the tinnitus is bothersome as it can interfere sometimes with sleep or routine daily activities. [Appellant] also reports difficulty concentrating and even reading because of the tinnitus symptoms. He has difficulty relaxing in this regard.... In my opinion, according to [appellant's] history, hearing test findings, [appellant's] hearing loss and tinnitus are due to noise exposure encountered with [appellant's] federal civilian employment."

² Appellant had previously received schedule awards for hearing loss under OWCP file numbers xxxxxx259 and xxxxxx128. In a decision dated May 17, 2001, under OWCP file number xxxxxx259, OWCP issued a schedule award for 15 percent binaural hearing impairment. In a decision dated December 22, 2008, under claim number xxxxxx128, it issued a schedule award for an additional 5 percent binaural hearing impairment, noting that appellant's total binaural impairment was 20 percent.

On March 12, 2015 OWCP requested more information from appellant's treating physician on the issue of appellant's tinnitus and whether it was related to duties of his federal employment.

By decision dated April 14, 2015, OWCP issued a schedule award for an additional 8 percent binaural hearing impairment, noting that appellant's total impairment was 28 percent.

On July 8, 2015 Dr. Pappas responded to OWCP's March 12, 2015 letter, diagnosing appellant with hearing loss and explaining that tinnitus can be a symptom of hearing loss regardless of etiology.

By decision dated August 27, 2015, OWCP expanded appellant's claim to accept bilateral tinnitus.

By letter dated November 5, 2015, appellant requested an additional schedule award based on his hearing loss due to tinnitus.

On December 9, 2015 OWCP replied that appellant needed to exercise his appeal rights from the decision of April 14, 2015 in order to claim additional impairment related to his tinnitus.

By letter dated December 23, 2015, appellant requested reconsideration of OWCP's April 14, 2015 decision. In an attached letter, he noted that Dr. Pappas had opined that his tinnitus impacted activities of daily living.

On March 23, 2016 OWCP forwarded the case file and a statement of accepted facts to a district medical adviser for calculation of appellant's percentage of hearing impairment. In a report dated March 31, 2016, the DMA noted:

"In the March 5, 2015 report, Dr. Pappas indicated that [appellant's] tinnitus affects the ability to concentrate and read. He states that tinnitus 'can interfere sometimes with sleep and routine daily activities' but did not say this was happening with [appellant]. Based upon this I assigned an additional two percent for [appellant's] tinnitus bringing the final binaural hearing impairment of 30.4 percent.... [Appellant] has tinnitus in presence of binaural hearing impairment. The tinnitus impacts the following activities of daily living (ADLs): Concentration when Reading. Based upon this I recommend an additional 2 percent impairment for the tinnitus."

By decision dated April 6, 2016, OWCP vacated its decision of April 14, 2014. On April 7, 2016 it issued a schedule award for an additional 2 percent impairment due to tinnitus, for a total of 30 percent binaural impairment. The weekly pay listed in this schedule award was \$2,855.13, which, multiplied by the 75 percent compensation rate, resulted in \$2,141.35. The number of weeks of compensation was listed as four weeks, and the total payment was listed as \$7,622.44.

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.⁵ The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, 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* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. 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

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.⁹ The A.M.A., *Guides* state that, if tinnitus interferes with ADLs, 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.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision because the DMA's report upon which OWCP relied in granting appellant an additional two percent schedule award for tinnitus was not well rationalized.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

⁶ 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

⁷ See A.M.A., *Guides* 250 (6th ed. 2009).

⁸ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁹ See A.M.A., *Guides* 249 (6th ed. 2009).

¹⁰ *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

In a report dated March 31, 2016, the DMA noted:

“In the March 5, 2015 report, Dr. Pappas indicated that [appellant’s] tinnitus affects the ability to concentrate and read. He states that tinnitus ‘can interfere sometimes with sleep and routine daily activities’ but did not say this was happening with [appellant]. Based upon this I assigned an additional 2 percent for [appellant’s] tinnitus bringing the final binaural hearing impairment of 30.4 percent.... [Appellant] has tinnitus in presence of binaural hearing impairment. The tinnitus impacts the following ADLs: Concentration when Reading. Based upon this I recommend an additional two percent impairment for the tinnitus.”

In Dr. Pappas’ report dated March 5, 2015, he noted:

“Despite the hearing aid use, the patient’s tinnitus continues in either ear. The tinnitus is bothersome as it can interfere sometimes with sleep or routine daily activities. [Appellant] also reports difficulty concentrating and even reading because of the tinnitus symptoms. He has difficulty relaxing in this regard.... In my opinion, according to [appellant’s] history, hearing test findings, [appellant’s] hearing loss and tinnitus are due to noise exposure encountered with [appellant’s] federal civilian employment.”

The Board notes that the DMA mischaracterized Dr. Pappas’ report. The DMA claimed that Dr. Pappas did not say that tinnitus interfered with appellant’s sleep and routine daily activities. The DMA claimed that Dr. Pappas instead only addressed tinnitus’ effect on sleep and daily routines generally. However, Dr. Pappas’ report is clearly referencing the effect appellant’s tinnitus has on activities of appellant’s daily life, specifically, and not the effects of tinnitus generally. Moreover, the DMA’s report ignores Dr. Pappas’ stated effects of appellant’s tinnitus on his sleep, his general level of concentration, his ability to relax, and his routine daily activities in general. Because the DMA’s report is not well-rationalized based on its incorrect interpretation of the medical case record, it cannot serve as a basis for appellant’s increased schedule award for tinnitus.¹¹

The Board further notes that it is unclear as to whether OWCP miscalculated appellant’s total payment in its April 7, 2016 schedule award decision. In its April 7, 2016 schedule award decision, OWCP noted that appellant was entitled to four weeks of compensation at a weekly pay rate of \$2,855.13 at a compensation rate of 75 percent, resulting in weekly compensation of \$2,141.35. However, OWCP calculated his total award to be only \$7,622.44, which would equate to weekly compensation of only \$1,905.61. There are no deductions or cost-of-living adjustments contained in OWCP’s calculations that would explain this difference. As such, it is unclear how OWCP calculated appellant’s total schedule award. In deciding matters pertaining to a given claimant’s entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.¹² As this case is not in posture for decision due to

¹¹ See generally *Daniel E. Shown*, Docket No. 05-0610 (issued June 16, 2005). In addressing questions regarding hearing loss, the opinion of the DMA must be well rationalized.

¹² See *F.M.*, Docket No. 16-0198 (issued July 6, 2016).

insufficient medical evidence, this issue regarding calculation of the schedule award should be resolved upon the issuance of a *de novo* schedule award decision after appropriate medical development.

The Board will set aside OWCP's April 7, 2016 schedule award decision and remand to OWCP for a second opinion evaluation as to whether appellant is entitled to an additional impairment from tinnitus. After this and any other development OWCP deems appropriate, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for additional development consistent with the Board's decision.

Issued: October 4, 2016
Washington, DC

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

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

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