

FACTUAL HISTORY

On March 9, 2015 appellant, then a retired 72-year-old aviation safety inspector filed an occupational disease claim (Form CA-2) alleging that on November 3, 2014 he first realized that noise at work caused hearing loss. He indicated that he retired on March 31, 2014. In letters dated March 16, 2015, 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 1996. He stated that his hearing was never tested during his federal employment. In support of his claim appellant submitted a November 3, 2014 hearing evaluation report completed by a licensed audiology assistant. This 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, 10, and 45 decibels; left ear 20, 10, and 30. There was no reading at 3,000 cycles per second for the left ear. In a brief report dated March 2, 2015, Dr. Mitchell B. Miller, a Board-certified otolaryngologist, advised that appellant had significant bilateral sensorineural hearing loss with a significant history of workplace noise exposure. He opined that the employment-related noise exposure significantly contributed to appellant's hearing loss.

In May 2015 OWCP referred appellant for audiological testing and to Dr. William A. Alonso, Board-certified in otolaryngology, for a second opinion evaluation. The audiogram, performed on May 19, 2015 reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following: right ear 15, 15, 30, and 60 decibels; left ear 10, 10, 25, and 45 decibels. In an undated report, Dr. Alonso described examination findings, noting that the ear canals were unremarkable and drum motility within normal limits. He found no acoustic medical condition. Following his review of the May 19, 2015 audiogram, Dr. Alonso diagnosed bilateral sensorineural high frequency hearing loss caused by employment exposure and recommended a hearing aid trial.

In a report dated July 13, 2015, Dr. Eric Puestow, an OWCP medical adviser, reviewed Dr. Alonso's report and the May 19, 2015 audiogram. He advised that the date of maximum medical improvement was May 19, 2015, the date of the audiogram. The medical adviser calculated appellant's hearing loss, finding zero percent monaural loss of the left ear and eight percent loss of the right. A hearing aid on the right was authorized.

On July 14, 2015 OWCP accepted bilateral sensorineural hearing loss. On July 16, 2015 appellant filed a schedule award claim (Form CA-7). OWCP obtained pay rate information from the employing establishment which indicated that his weekly pay rate at retirement on March 31, 2014 was \$2,013.06 per week.

By decision dated September 21, 2015, appellant was granted a schedule award for eight percent impairment for hearing loss of the right ear only, for 4.16 weeks of compensation, to run from May 19 to June 17, 2015.

On February 24, 2016 appellant requested reconsideration of the denial of a hearing aid and compensation for hearing loss on the left. He submitted a February 22, 2016 audiogram performed by Christine Vecchio, Au.D. This 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, 15, and 55 decibels; left ear 15, 15, 30, and 50 decibels. Ms. Vecchio recommended hearing aids in both ears.

In a report dated February 28, 2016, Dr. Jeffrey M. Israel, an OWCP medical adviser who is Board-certified in otolaryngology, reviewed the record, including audiograms. He reported the findings of the February 22, 2016 audiogram and advised that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had zero percent monaural hearing loss of the right ear and 3.75 monaural loss on the left.

Bilateral hearing aids were authorized on February 29, 2016.

On March 7, 2016 appellant filed a second schedule award claim (Form CA-7).

By decision dated March 24, 2016, OWCP granted appellant a schedule award for 3.75 percent loss of hearing in the left ear, for 2.08 weeks of compensation, to run from February 22 to March 5, 2016.

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 is to be used.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 cycles per second, 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5a (February 2013) and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ A.M.A., *Guides*, *supra* note 2 at 250.

⁸ *Id.*

multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

OWCP accepted appellant's binaural hearing loss due to his noise exposure at work. On September 21, 2015 it granted him a schedule award for eight percent monaural hearing loss in the right ear.¹² On March 24, 2016 OWCP granted appellant a schedule award for 3.75 monaural hearing loss in the left ear, based on a February 22, 2016 audiogram and its review by Dr. Israel, an OWCP medical adviser who is Board-certified in otolaryngology.

The February 22, 2016 audiogram tested frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed 15, 15, 30, and 50 decibels, respectively, on the left, for a total decibel loss of 110. Following OWCP procedures described above, Dr. Israel noted the decibel total of 110 for the left ear which, when divided by 4, yielded an average of 27.5. This average was reduced by 25 decibels, yielding a 2.5 loss which, when multiplied by 1.5, yielded a 3.75 monaural loss on the left.

The record also includes an audiogram dated November 3, 2014. This, however, does not provide support for a greater impairment because there is no evidence that appellant underwent examination by an otolaryngologist, that the audiometric testing was performed by a certified audiologist, or that all the equipment used for testing met the required standards.¹³ Moreover, the audiogram was incomplete regarding the left ear because it did not provide a reading at 3,000 cycles per second. A May 19, 2015 audiogram reflected zero loss of the left ear.¹⁴

The Board, however, notes that OWCP procedures provide that fractions should be rounded.¹⁵ Thus, in the case at hand, OWCP should have rounded up appellant's 3.75 monaural

⁹ *Id.*

¹⁰ *Id.* at 251.

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

¹² The Board lacks jurisdiction to review this decision as, under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e); *see D.R.*, Docket No. 16-0005 (issued February 5, 2016).

¹³ Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 3.600.8, Exhibit 4 (September 1995); *see J.H.*, 59 ECAB 377 (2008).

¹⁴ The decibel loss on the left ear totaled 90 which, when divided by 4, yielded an average of 22.5, less than the fence of 25, for a 0 impairment of the left ear.

¹⁵ Fractions should be rounded down from .49 or up from .50. *See* Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 3.700.4.b(2)(b) (January 2010).

hearing loss on the left. Accordingly, the Board will modify the monaural left ear loss of hearing to four percent.¹⁶

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 has four percent monaural hearing loss of the left ear.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: September 7, 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

¹⁶ *Id.*