

ISSUE

The issue is whether appellant has more than 11 percent binaural hearing loss for which he previously received a schedule award.

On appeal appellant asserts that he is entitled to an additional impairment due to tinnitus.

FACTUAL HISTORY

This case has previously been before the Board.³ In an April 8, 2016 decision, the Board set aside a December 3, 2015 OWCP decision that denied appellant's hearing loss claim because it had not been timely filed. The Board remanded the case to OWCP because it failed to address the evidence of record regarding the employing establishment's hearing conservation program. The facts relevant to the present appeal are set forth below.

On August 4, 2015 appellant, then a 60-year-old retired engineering technician, filed an occupational disease claim (Form CA-2) for binaural hearing loss. He indicated that he was first aware of the condition and its relationship to employment on June 16, 2009. Appellant provided a description of his job titles from 1971 until his retirement in 2011, which included work at three employing establishment facilities. In a statement from appellant's supervisor dated August 20, 2015, he indicated that he supervised appellant from May 11, 2008 until he retired on December 31, 2011. Appellant's supervisor described noise exposure at that facility.

The record contains employing establishment audiograms from August 30, 1976 to November 1, 2002, which were part of a hearing conservation program, and a June 16, 2009 audiogram done at the request of a private physician.

In September 2015, OWCP referred appellant to Dr. Jeffrey Powell, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. In a November 24, 2015 report, Dr. Powell noted a history of noise exposure at work, his review of the statement of accepted facts and medical record, and appellant's complaint of bilateral hearing loss and tinnitus. He described physical examination findings and attached an audiogram report dated November 24, 2015 which reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following: right ear 20, 15, 35, and 50 decibels; left ear 20, 20, 60, and 70 decibels. Dr. Powell advised that the audiogram demonstrated normal-to-moderately severe bilateral high-frequency noise-induced sensorineural hearing loss, worse on the left. He diagnosed bilateral high-frequency noise-induced sensorineural hearing loss, and tinnitus secondary to the hearing loss which were caused by appellant's federal employment and recommended hearing aids. Dr. Powell 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*),⁴ appellant had 7.5 percent impairment of the right ear with 3 percent added for tinnitus for a total 10.5 percent monaural loss, and 26.25 percent impairment of the left ear with

³ Docket No. 16-0394 (issued April 8, 2016).

⁴ A.M.A., *Guides* (6th ed. 2009).

3 percent added for tinnitus, for 29.25 percent total monaural loss. By utilizing the combined hearing loss formula, Dr. Powell concluded that appellant had a 13.625 binaural hearing loss.

By decision dated December 3, 2015, OWCP denied appellant's hearing loss claim as untimely filed.

Following the Board's April 8, 2016 decision, on May 26, 2016 OWCP accepted the conditions of noise effects on inner ear, bilateral, and tinnitus, bilateral. It authorized hearing aids.

On June 24, 2016 appellant filed a schedule award claim (Form CA-7). OWCP asked its medical adviser to review the record and provide an impairment evaluation. In a June 30, 2016 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist and OWCP medical adviser, noted his review of the medical record, including Dr. Powell's November 24, 2015 report. Dr. Israel advised that maximum medical improvement was reached on November 25, 2015 and agreed with Dr. Powell's conclusion that appellant had a right monaural loss of 7.5 percent and a left monaural loss of 26.25 percent for a calculated binaural loss of 10.6 percent. OWCP's medical adviser noted that Dr. Powell added three percent to each ear for tinnitus.

By decision dated July 7, 2016, appellant was granted a schedule award for 11 percent binaural hearing loss, for 22 weeks of compensation, to run from November 24, 2015 to April 25, 2016.

LEGAL PRECEDENT

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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice under the law for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment in accordance with the standards set forth in the specified edition of the A.M.A., *Guides*. For decisions issued after May 1, 2009, the sixth edition is to be used.⁷

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.⁸ The "fence" of 25 decibels is then deducted

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁸ *Supra* note 4 at 250.

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.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹² The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.¹³

If tinnitus interferes with activities of daily living, 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.¹⁴

ANALYSIS

OWCP accepted binaural hearing loss due to noise exposure at work. On July 7, 2016 it granted appellant a schedule award for 11 percent binaural hearing loss.

In his November 25, 2014 report, Dr. Powell provided a November 24, 2015 audiogram which reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second and revealed the following: right ear 20, 15, 35, and 50 decibels; left ear 20, 20, 60, and 70 decibels. Following OWCP procedures described above, Dr. Powell found that appellant had 7.5 percent impairment of the right ear with 3 percent added for tinnitus for a total 10.5 percent monaural loss, and 26.25 percent impairment of the left ear with 3 percent added for tinnitus, for 29.25 percent total monaural loss. Dr. Powell concluded that appellant had 13.625 binaural hearing loss.

OWCP's medical adviser, Dr. Israel, agreed with Dr. Powell's impairment analysis for appellant's hearing loss in each ear. While OWCP's medical adviser noted Dr. Powell's finding of an additional three percent impairment in each ear due to tinnitus, neither Dr. Powell nor OWCP's medical adviser specifically addressed whether the tinnitus impacted appellant's activities of daily living. Thus, appellant has failed to submit reasoned medical evidence showing that he was entitled to increased impairment due to tinnitus.¹⁵ Accordingly, appellant has not established entitlement to an additional schedule award.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 251.

¹² *Horace L. Fuller*, 53 ECAB 775 (2002).

¹³ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004); *supra* note 7 at Chapter 3.700.4(b)(2)(b) (September 2010).

¹⁴ *Supra* note 4 at 249.

¹⁵ *See R.W.*, Docket No. 15-0345 (issued September 20, 2016).

Appellant may, at any time, 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 established no more than 11 percent impairment for binaural hearing loss for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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