

ISSUE

The issue is whether appellant has met his burden of proof to establish more than three percent binaural hearing loss, for which he previously received a schedule award.

On appeal counsel contends that appellant is entitled to a schedule award for 15 percent monaural hearing loss in the left ear resulting in an additional 7.8 weeks of compensation based on the medical opinion of Dr. Jeffrey P. Powell, a Board-certified otolaryngologist and OWCP referral physician, which is greater than the schedule award he previously received for 3 percent binaural hearing loss resulting in 6 weeks of compensation.

FACTUAL HISTORY

On May 26, 2017 appellant, then a 57-year-old retired production deputy superintendent, filed an occupational disease claim (Form CA-2) alleging hearing loss in both ears as a result of noise exposure at work. On the reverse side of the claim form, the employing establishment indicated that appellant had reported the condition to his supervisor on May 25, 2017 and that he was last exposed to conditions alleged to have caused his hearing loss on December 30, 2016.

OWCP, by development letter dated May 26, 2017, informed appellant of the deficiencies in his claim and requested that he provide additional evidence because the evidence submitted did not show that the noise exposure he experienced caused injury. On the same date it also requested that the employing establishment submit information, including the job sites where appellant worked, the sources of noise appellant was exposed to, the period of exposure, and the decibel and frequency of the exposure. Both appellant and the employing establishment were afforded 30 days to submit the requested information.

On June 5, 2017 appellant alleged that he first became aware of his condition and its relationship to his federal employment in 2009. He reported a history of noise exposure in his work duties at nonfederal employers from 1979 to 1985 and at the employing establishment from 1978 to 1979 and 1985 to December 31, 2016, the date he retired from the employing establishment. Appellant noted that he used hearing protection during his employment. He also noted noise exposure from hunting twice a year since 2003. Appellant indicated that he was last exposed to hazardous noise in December 2016. He had not filed a prior claim for a condition that affected his ears or hearing.

Appellant submitted audiograms performed by the employing establishment as part of a hearing conservation program dated January 14, 1985 through June 16, 2016. He also submitted a notification of personnel action (SF-50) dated December 29, 2016 which indicated that he had retired effective December 31, 2016.

By letter dated June 22, 2017, OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Powell for an otologic examination and audiological testing. In a July 25, 2017 medical report, Dr. Powell noted a history of appellant's exposure to noise in his work duties and hunting and his use of hearing protection. He reported normal findings on physical examination and diagnosed bilateral high frequency neurosensory hearing loss with a left ear decreased discrimination score. Dr. Powell further reported that

appellant had no complaint of tinnitus, and thus, a tinnitus handicap inventory questionnaire was not utilized. He opined that appellant's hearing loss was in part, or all, due to noise exposure in his federal civil employment. Dr. Powell reasoned that his opinion was based on appellant's work history, use of hearing protection devices, and very limited recreational loud noise exposure from hunting. He further related that his review of audiograms dated January 14, 1985 to June 16, 2016 showed hearing loss. Dr. Powell recommended an annual ear, nose, and throat examination and audiogram, bilateral hearing aids, and hearing protection.

Paula Abraham, an audiologist, performed an audiogram on the date of Dr. Powell's examination. She reported testing at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) which revealed the following: right ear 10, 15, 20, and 35 decibels (dBs), respectively; left ear 20, 20, 40, and 60 dBs, respectively. Dr. Powell reviewed Ms. Abrahams' audiogram results and completed a hearing impairment calculation worksheet on July 25, 2017 based on the hearing loss formula from the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ He averaged appellant's right ear hearing levels of 10, 15, 20, and 35 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 20. Because this average was below the fence of 25 dB, Dr. Powell determined that appellant had zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels of 20, 20, 40, and 60 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 140. After subtracting out a 25 dB fence, Dr. Powell multiplied the remaining 10 balance by 1.5 to calculate 15 percent left ear monaural hearing loss. He did not calculate binaural hearing loss impairment. Dr. Powell advised that appellant had no additional permanent impairment for tinnitus.

By decision dated August 4, 2017, OWCP accepted appellant's claim for binaural sensorineural hearing loss.

On August 21, 2017 appellant filed a claim for a schedule award (Form CA-7).

On August 23, 2017 OWCP referred appellant's medical record to Dr. Morley Slutsky, a Board-certified occupational medicine physician serving as an OWCP medical adviser. It requested that Dr. Slutsky provide an opinion on the extent of hearing loss impairment using the sixth edition of the A.M.A., *Guides* and determine the date of maximum medical improvement (MMI).

In a September 2, 2017 report, Dr. Slutsky reviewed the SOAF, appellant's medical record, and Dr. Powell's July 25, 2017 report and audiogram. He agreed with Dr. Powell that appellant had work-related binaural sensorineural hearing loss and no tinnitus. Dr. Slutsky applied the hearing loss formula from the sixth edition of the A.M.A., *Guides*. He added dB losses on the right listed in Dr. Powell's report, which he related as: 10, 15, 20, and 35 to reach 80 and averaged this sum to reach 20. Dr. Slutsky then subtracted the fence of 25 as directed by the A.M.A., *Guides* to reach -5, and multiplied this amount by 1.5 to reach a right monaural hearing loss of -7.5 percent. He followed the same procedure with the audiographic results of appellant's left ear, which he related as: 20, 20, 40, and 60 dB losses to reach 140 and an average of 35. After deducting the fence of 25 to reach 10, Dr. Slutsky multiplied this amount by 1.5 to reach a left monaural hearing

³ A.M.A., *Guides* (6th ed. 2009).

loss of 15 percent. He then multiplied the 0 percent monaural loss for the right ear by 5, added the 15 percent left ear monaural hearing loss, and divided the total by 6 as directed by the A.M.A., *Guides*, resulting in 2.5 percent binaural hearing loss. Dr. Slutsky advised that no additional impairment for tinnitus was warranted. He recommended authorization for a hearing aid for both ears and determined that appellant had reached MMI on July 25, 2017.

By decision dated October 17, 2017, OWCP granted appellant a schedule award for three percent binaural hearing loss without tinnitus based on Dr. Slutsky's review of Dr. Powell's clinical findings and impairment ratings.⁴ The period of the award, equivalent to six weeks, ran from July 25 to September 4, 2017.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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.⁷

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁸ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁹ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs 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

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (January 2010) (results should be rounded down for figures less than .5 and up for .5 and over). OWCP, in its October 17, 2017 decision, rounded Dr. Slutsky's 2.5 binaural hearing loss rating to 3 percent.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁸ A.M.A., *Guides* 250 (6th ed. 2009).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

amount of the binaural hearing loss.¹² The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹³

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

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.¹⁵

ANALYSIS

The Board finds that appellant has established binaural hearing loss greater than the three percent previously awarded.

OWCP accepted that appellant sustained a binaural hearing loss due to noise exposure at work. On October 17, 2017 it issued him a schedule award for three percent binaural hearing loss, an award which covered a period of six weeks from July 25 through September 4, 2017.

OWCP referred appellant, together with the medical record and a SOAF, to Dr. Powell for a second opinion evaluation performed on July 25, 2017. Dr. Powell diagnosed work-related binaural high frequency neurosensory hearing loss. Utilizing the audiogram performed on the date of his evaluation by Ms. Abraham and the hearing loss formula from the sixth edition of the A.M.A., *Guides*, he averaged appellant's right ear hearing levels of 10, 15, 20, and 35 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 20. Because this average was below the fence of 25 dB, Dr. Powell determined that appellant had zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels of 20, 20, 40, and 60 dB at 500, 1,000, 2,000, and 3,000 Hz, which totaled 140. After subtracting out a 25 dB fence, Dr. Powell multiplied the remaining 10 balance by 1.5 to calculate a 15 percent left ear monaural hearing loss. He did not calculate binaural hearing loss impairment. Dr. Powell noted that appellant had no additional impairment for tinnitus.

Consistent with its procedures,¹⁶ OWCP properly referred the medical evidence to Dr. Slutsky, its medical adviser, for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. On September 2, 2017 Dr. Slutsky

¹² *Id.*

¹³ *Horace L. Fuller*, 53 ECAB 775 (2002); *B.B.*, Docket No. 16-0512 (issued May 17, 2016).

¹⁴ *E.S.*, 59 ECAB 249 (2007); *Reynoldo R. Lichtenberger*, 52 ECAB 462 (2001); *B.B.*, *id.*

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

¹⁶ *Id.*; *Hildred I. Lloyd*, 42 ECAB 944 (1991).

reviewed appellant's medical record, including Dr. Powell's July 25, 2017 findings. He concurred in the finding of 0 percent monaural hearing loss in the right ear and 15 percent monaural hearing loss in the left ear based on Ms. Abrahams' audiogram results and Dr. Powell's second opinion report. Dr. Slutsky then multiplied the 0 percent monaural loss for the right ear by 5, added the 15 percent left ear monaural hearing loss, and divided the total by 6 as directed by the A.M.A., *Guides*, resulting in 2.5 percent binaural hearing loss. He noted that appellant had no tinnitus, and thus, no additional impairment for tinnitus was warranted. Dr. Slutsky concluded that hearing aids were authorized and noted the date of MMI as July 25, 2017, the date of Dr. Powell's examination.

While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both,¹⁷ 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.¹⁸ In this case, appellant's compensation is greater under the procedures used for calculating monaural hearing loss. FECA provides that a claimant is entitled to 52 weeks of compensation for 100 percent loss of hearing in one ear and 200 weeks compensation for 100 percent hearing loss in both ears. Since appellant's left ear monaural loss was 15 percent, multiplying 15 percent by the 52 weeks for monaural hearing loss results in a total of 7.8 weeks of compensation, which is greater than the six weeks of compensation he previously received for 3 percent binaural hearing loss. As the monaural loss results in a greater number of weeks, OWCP erred in calculating appellant's schedule award based upon his binaural hearing impairment.¹⁹ Appellant's schedule award should have been based upon his left ear monaural hearing impairment.

As such, the Board modifies the October 17, 2017 schedule award decision to reflect 15 percent left ear monaural hearing loss.²⁰

On appeal counsel contends that appellant is entitled to a schedule award for 15 percent left ear monaural hearing loss resulting in 7.8 weeks of compensation based on Dr. Powell's medical opinion, which is greater than the schedule award he previously received for 3 percent binaural hearing loss resulting in 6 weeks of compensation. As stated above, appellant is entitled to a greater number of weeks of compensation based on his 15 percent left ear monaural hearing loss.

CONCLUSION

The Board finds that appellant has established 15 percent left ear monaural hearing impairment, warranting an additional 1.8 weeks of schedule award compensation benefits.

¹⁷ 5 U.S.C. § 8107(c)(13).

¹⁸ See cases cited, *supra* note 14.

¹⁹ S.S., Docket No. 15-1470 (issued October 9, 2015); J.B., Docket No. 10-1987 (issued June 3, 2011).

²⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 13, 2018
Washington, DC

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

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

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