

exposure to loud noises while inspecting mining operations while in the performance of duty. He indicated that he first became aware of his condition on September 1, 2000 and attributed it to his federal employment on that date.²

In support of this claim, appellant submitted an employing establishment July 23, 2014 noise exposure summary indicated five- to six-hour daily exposure to noise from mining machinery and other equipment that used auxiliary fans for face ventilation. The record also contains a January 8, 2015 statement of accepted facts (SOAF) which listed his noise exposure.

On February 7, 2017 OWCP referred appellant, together with the SOAF to Dr. Jack W. Aland, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a March 7, 2017 report, Dr. Aland reviewed the SOAF and found that appellant's employment-related noise exposure was sufficient to have caused his hearing loss. He diagnosed bilateral sensorineural hearing loss. Dr. Aland opined that this hearing loss was due to noise exposure encountered during appellant's federal employment. He opined that long-term noise exposure resulted in significant worsening of appellant's hearing. Audiometric testing was performed for Dr. Aland on March 7, 2017. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 hertz (HZ) revealed the following: right ear 25, 25, 45, and 65 decibels (dBs); left ear 25, 25, 45, and 65 dBs.

By decision dated March 21, 2017, OWCP accepted appellant's claim for binaural sensorineural hearing loss due to noise exposure.

On March 27, 2017 an OWCP medical adviser reviewed Dr. Aland's report and the audiometric test of March 7, 2017. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*), appellant had 22.5 percent monaural hearing loss in each ear and 22.5 percent binaural hearing loss. The medical adviser recommended hearing aids.

On March 28, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a decision dated September 12, 2017, OWCP denied appellant's additional schedule award claim, finding that he had not established greater hearing impairment than that previously awarded under OWCP File No. xxxxxx005.

² The present claim was assigned OWCP File No. xxxxxx320. Appellant has a prior claim under OWCP File No. xxxxxx005, which OWCP accepted for hearing loss due to exposure to loud machinery while in the performance of duty as a coal mine safety and health inspector as of August 21, 2001. By decision dated April 8, 2008, OWCP issued appellant a schedule award for 23 percent binaural hearing loss. Appellant also has a prior claim under OWCP File No. xxxxxx319, which OWCP accepted for hearing loss due to exposure to loud noise as a special investigator as of July 2014. Appellant noted on the claim forms for OWCP File No. xxxxxx320 and xxxxxx319 that they were additional claims for hearing loss as he had experienced another hearing threshold shift. OWCP has not administratively combined appellant's three hearing loss claims.

³ A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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.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.⁸ 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.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

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 of impairment in accordance with the A.M.A., *Guides*, with the medical adviser

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.* See also *M.A.*, Docket No. 17-1490 (issued November 14, 2017); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ *Supra* note 2 at 250 (6th ed. 2009).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹³ *M.W.*, Docket No. 16-1777 (issued July 20, 2017); *Robert E. Cullison*, 55 ECAB 570 (2004).

providing rationale for the percentage of impairment specified.¹⁴ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁵

ANALYSIS

The Board finds that appellant has no more than 23 percent binaural hearing loss for which he previously received a schedule award.

OWCP accepted that appellant sustained binaural hearing loss due to noise exposure from his federal employment. The issue is whether he has proven entitlement to an additional schedule award by establishing that he sustained more than 23 percent binaural loss of hearing for which he has already received a schedule award. The Board finds that the evidence of record does not establish that appellant has more than 23 percent binaural loss of hearing. The March 7, 2017 audiogram results did not demonstrate more than 23 percent binaural loss of hearing in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP properly referred appellant to Dr. Aland for an examination relative to his claimed hearing loss. Dr. Aland's March 20, 2017 examination found that appellant's binaural sensorineural hearing loss was due to his workplace noise exposure. On March 21, 2017 an OWCP's medical adviser reviewed Dr. Aland's report and found that the binaural hearing loss was 22.5 percent for schedule award purposes. He applied the standardized procedures to the March 7, 2017 audiogram performed for Dr. Aland to determine whether appellant's binaural hearing loss warranted an additional schedule award over the 23 percent schedule award he previously received.

Appellant's testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 25, 25, 45, and 65, respectively. These dBs were totaled at 160 and were divided by 4 to obtain an average hearing loss at those cycles of 40 dBs. The average of 40 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 15 and multiplied by 1.5 to reach 22.5 percent to hearing loss for the right ear.

Appellant's testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 25, 25, 45, and 65, respectively. These dB were totaled at 160 and were divided by 4 to obtain an average hearing loss at those cycles of 40 dBs. The average of 40 dBs was then reduced by 25 dBs (the first 25 dBs were discounted by the "fence" as required by the A.M.A., *Guides*) to equal 15 and multiplied by 1.5 to reach 22.5 percent to hearing loss for the left ear. OWCP's medical adviser then applied the binaural formula finding that 5 multiplied by 22.5 and added to 22.5 and then divided by 6 resulted in 22.5 percent binaural loss. In accordance with OWCP's procedures 22.5 binaural loss of hearing is rounded to 23 percent binaural loss of hearing, the percentage for which appellant previously received a schedule award.

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹⁵ See *M.A.*, *supra* note 6; *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

As explained above, appellant has not established more than the 23 percent binaural hearing loss previously awarded in accordance with the A.M.A., *Guides*. He is, therefore, not entitled to an additional schedule award.¹⁶

Appellant may request a schedule award or increased schedule award at any time 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 not established more than 23 percent binaural hearing loss, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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 Upon return of the case record OWCP should consider administratively combining OWCP File No. xxxxxx320 with OWCP File Nos. xxxxxx319 and xxxxxx005.