



## **FACTUAL HISTORY**

On June 28, 2016 appellant, then a 56-year-old airway transportation systems specialist, filed an occupational disease claim (Form CA-2) alleging that he developed “abnormal hearing ability” due to factors of his federal employment including high levels of noise exposure while working at a high capacity airport. He noted that he first became aware of the condition and of its relationship to his federal employment on May 13, 2016. Appellant did not stop work and was last exposed to the employment factors on June 24, 2016.

On October 11, 2016 OWCP accepted appellant’s claim for bilateral effects of noise exposure of the inner ears. In a form report dated July 30, 2014, Dr. Marc Leffer, Board-certified in occupational medicine, noted that appellant had abnormal results on an audiogram taken on May 15, 2013. He recommended a hearing evaluation. Dr. Leffer noted that appellant had significant high-frequency hearing loss in both ears.

OWCP referred appellant, a statement of accepted facts (SOAF), and an otologic evaluation questionnaire for a second opinion evaluation with Dr. Steven R. Gold, a Board-certified otolaryngologist. In a report dated September 26, 2016, Dr. Gold reviewed the SOAF, performed an audiological examination, and completed OWCP’s evaluation questionnaire. He reviewed appellant’s audiogram, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 5, 10, 35, and 50 decibels (dBs) on the right, respectively, and 5, 15, 35, and 50 dBs on the left, respectively. The audiogram was performed by an audiologist who documented timely calibration of testing equipment. Dr. Gold diagnosed bilateral moderate high-frequency sensorineural hearing loss, slightly greater on the left, and bilateral tinnitus. He attributed his sensorineural hearing loss to noise exposure at work. Dr. Gold opined that “about 26 percent” of appellant’s sensorineural hearing loss was due to noise exposure encountered in appellant’s federal employment. He recommended hearing aids.

On October 4, 2016 OWCP forwarded the medical record and SOAF to a district medical adviser (DMA) for calculation of appellant’s percentage of permanent hearing impairment and assignment of the date of maximum medical improvement (MMI). On October 8, 2016 the DMA reviewed the otologic and audiologic testing performed on behalf of Dr. Gold and applied OWCP’s standardized procedures to his evaluation, utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> He determined that MMI occurred on September 26, 2016, the date of the most recent audiogram. The DMA calculated that the average threshold of the four frequencies of the right ear was 25, which minus the threshold fence of 25 decibels, resulted in a total monaural right ear hearing loss of zero percent. The average threshold of the four frequencies of the left ear was 26.25, which minus the threshold fence of 25 decibels, resulted in a remaining percentage of 1.25. This figure was multiplied by 1.5 to arrive at a total loss of 1.88 percent of the left ear monaural hearing loss. The binaural hearing loss was calculated by multiplying the zero hearing loss of the right ear by 5, resulting in zero, then adding the greater loss of 1.88 and dividing the total by 6, resulting in 0.3 percent binaural hearing loss. The DMA recommended authorization for hearing aids.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On October 18, 2016 appellant filed a claim for a schedule award (Form CA-7). In support thereof, he resubmitted the September 26, 2016 audiogram and report from Dr. Gold.

On December 7, 2016 OWCP authorized a binaural hearing loss examination for consideration of the need for hearing aids.<sup>3</sup>

In a schedule award payment memorandum, OWCP noted that paying left ear hearing loss was more advantageous to appellant, as 2 percent rating for the left ear resulted in 7.28 days of compensation, while a 0.3 percent binaural rating resulted in no schedule award compensation.

By decision dated January 16, 2018, OWCP granted appellant a schedule award for two percent monaural hearing loss of the left ear. The period of the award was for 1.04 weeks to run during the period September 26 to October 3, 2016. OWCP also found zero percent hearing loss of the right ear.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> 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.<sup>6</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>8</sup> 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 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs 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

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<sup>3</sup> In a report dated February 23, 2017, Courtney Matthews, an audiologist, noted that appellant had been fitted with hearing aids on that date. She noted that OWCP had been billed for the hearing aids.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See *D.K.*, Docket No. 10-0174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 2017).

<sup>8</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than zero percent monaural hearing loss in his right ear and more than two percent monaural hearing loss in his left ear, for which he previously received a schedule award.

OWCP granted appellant a schedule award for two percent permanent monaural hearing loss of the left ear, based upon the September 26, 2016 report of Dr. Gold, as reviewed by the DMA. The losses at the frequencies of 500, 1,000, 2,000, and 3,000 Hz were added and averaged, and the fence of 25 decibels was deducted.<sup>11</sup> The remaining amount was multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. For levels recorded in the right ear of 5, 10, 35, and 50, the above formula derives zero percent monaural loss. For levels recorded in the left ear of 5, 15, 35, and 50, the above formula derives 1.88 percent monaural loss. Appellant's right ear hearing loss was, therefore, not ratable.

While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both,<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Appellant's binaural hearing loss was 0.3 percent; multiplying 200 weeks by 0.3 percent results in less than a single day of compensation, which OWCP properly rounded down to zero in its calculations.<sup>15</sup> Appellant's left ear monaural loss was 2 percent; multiplying 52 weeks by 2 percent results in 1.04 weeks of compensation, or

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<sup>9</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>10</sup> *B.B.*, Docket No. 16-0512 (issued May 17, 2016); *Reynoldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>11</sup> *See M.P.*, Docket No. 17-1736 (issued February 14, 2018).

<sup>12</sup> 5 U.S.C. § 8107(c)(13).

<sup>13</sup> *Supra* note 9.

<sup>14</sup> *Supra* note 11.

<sup>15</sup> The policy of OWCP is to round the calculated percentage of impairment to the nearest whole number. Results should be rounded down for figures less than .5 and up for .5 and over. *See V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.H.*, *supra* note 9; *Robert E. Cullison*, 55 ECAB 570 (2004). *See also* Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 3.700.3(b) (January 2010).

7.28 days. As the monaural loss results in a greater compensation, the Board finds that OWCP correctly issued a schedule award based on his monaural left ear hearing impairment.<sup>16</sup>

Therefore, the Board finds that appellant has not met his burden of proof to establish greater than zero percent monaural hearing loss in his right ear and two percent monaural hearing loss in his left ear, for which he previously received a schedule award.

Appellant may request a schedule award or an 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 met his burden of proof to establish more than zero percent monaural hearing loss in his right ear and more than two percent monaural hearing loss in his left ear, for which he previously received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2019  
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

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<sup>16</sup> See *W.C.*, Docket No. 18-0290 (issued July 13, 2018).