

ISSUE

The issue is whether appellant has met his burden of proof to establish more than 28 percent binaural hearing loss, for which he previously received a schedule award.

FACTUAL HISTORY

On October 10, 2018 appellant, then a 59-year-old quality assurance specialist, filed an occupational disease claim (Form CA-2) alleging that he suffered hearing loss in both ears due to factors of his federal employment. He noted that he first became aware of his condition and first realized it was caused or aggravated by his federal employment on February 1, 2017. Appellant did not stop work.

On January 10, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and copy of the medical record to Dr. Jeffrey Powell, Board-certified in otolaryngology, for a second opinion evaluation to determine the nature and extent of his employment-related conditions.

In his February 14, 2019 medical report, Dr. Powell reviewed the SOAF, history of injury and the medical evidence of record. He noted mild-to-moderately severe neurosensory hearing loss from 500 Hertz (Hz) down to 8,000 Hz and recorded appellant's speech threshold at 40 decibels (dBs) in each ear, a speech discrimination score of 100 percent in the right ear and 96 percent in the left ear and a sensation level of 40 dBs in each ear. Dr. Powell reviewed appellant's audiometric testing results and, using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ (A.M.A., *Guides*), found at 500, 1,000, 2,000 and 3,000 Hz losses of 30, 35, 55 and 60 dBs on the right, respectively; and 35, 40, 45 and 55 on the left, respectively. He diagnosed bilateral neurosensory hearing loss with tinnitus secondary to this hearing loss. Dr. Powell found: 32 percent monaural hearing loss in the right ear, allowing 2 percent for tinnitus; 30.125 percent monaural hearing loss in the left ear, allowing 2 percent for tinnitus; and 30.44 percent binaural hearing loss. He opined that appellant's hearing loss was due to noise exposure in his federal employment and recommended an annual ear, nose, throat, and audiometric evaluation, bilateral hearing aids and the use of hearing protection devices around any and all types of loud noise exposure.

By decision dated February 28, 2019, OWCP accepted appellant's occupational disease claim for noise effects on the inner ear and tinnitus, unspecified ear.

On March 19, 2019 OWCP referred the medical record and SOAF to Dr. Charles Pettit, a Board-certified otolaryngologist serving as a district medical adviser (DMA), to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

³ A.M.A., *Guides* (6th ed. 2009).

In his June 5, 2019 report,⁴ Dr. Pettit reviewed Dr. Powell's February 14, 2019 report and found that it contained a mathematical error. He applied the audiometric data to OWCP's standard for evaluation hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant sustained a right monaural loss of 30 percent, a left monaural loss of 26.625 percent and binaural hearing loss of 25.52, increased to 27.52 for tinnitus. Dr. Pettit averaged appellant's right ear hearing levels of 30, 35, 55, and 60 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 45. After subtracting out a 25 dB fence, he multiplied the remaining 20 balance by 1.5 to calculate 30 percent right ear monaural hearing loss. Dr. Pettit then averaged appellant's left ear hearing levels of 35, 40, 45, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, and totaled 42.75. After subtracting out a 25 dB fence, he multiplied the remaining 17.75 balance by 1.5 to calculate 26.625 left ear monaural hearing loss. Dr. Pettit then calculated 28 percent binaural hearing loss by multiplying the left ear loss of 26.625 percent by five, adding the 30 percent right ear loss, and dividing this sum by six to get 25.52. He added 2 percent for tinnitus and rounded the sum of 27.52 to 28 percent. Dr. Pettit agreed with Dr. Powell's recommendations for hearing conservation and hearing aids.

On July 11, 2019 appellant filed a claim for a schedule award (Form CA-7).

By decision dated November 1, 2019, OWCP granted appellant a schedule award for 28 percent binaural hearing loss. It found he had reached MMI on February 14, 2019. The period of the award was for 56 weeks to run during the period February 14, 2019 to March 11, 2020.

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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The sixth edition of the A.M.A., *Guides*⁷ has been adopted by OWCP for evaluating schedule losses and the Board has

⁴ The Board notes that Dr. Pettit previously submitted a March 28, 2019 report in which he explained that he received no medical records or SOAF with which to conduct an examination. OWCP later provided him with an April 17, 2019 clarification request with the missing information.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Supra* note 3.

concurrent in such adoption.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁹

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 Hz, the losses at each frequency are added up and averaged.¹⁰ 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.¹¹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹² The binaural loss of hearing 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.¹³ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁴

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.¹⁵ If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.¹⁶

ANALYSIS

The Board finds that the evidence of record establishes that appellant has 30 percent binaural hearing loss.

OWCP accepted appellant's occupational disease claim for noise effects on the inner ear and tinnitus, unspecified ear, due to noise exposure at work and granted him a schedule award for 28 percent binaural hearing loss based on the June 15, 2019 report of its DMA, Dr. Pettit.

In his report Dr. Pettit reviewed the record, including Dr. Powell's February 14, 2019 second opinion report, and provided an impairment evaluation. He applied the audiometric data

⁸ *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁰ A.M.A., *Guides* 250.

¹¹ *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ *V.M.*, *supra* note 8.

¹⁵ *See* A.M.A., *Guides* 249.

¹⁶ *Id.*

to OWCP's standard for evaluation hearing loss under the sixth edition of the A.M.A., *Guides*¹⁷ and determined that appellant sustained a right monaural loss of 30 percent, a left monaural loss of 26.625 percent and binaural hearing loss of 27.52, rounded to 28 percent. Dr. Pettit noted that Dr. Powell's report was thorough with all salient points covered adequately and agreed with his recommendations for hearing conservation and hearing aids, but indicated that their calculations differed slightly as there appeared to be a mathematical error in Dr. Powell's report.

The Board finds that the DMA's calculation of appellant's hearing loss was in error. Specifically, the Board finds that while Dr. Pettit's calculation of 30 percent monaural hearing loss for appellant's right ear was correct, he erred in the calculation of appellant's left ear monaural hearing loss as he incorrectly arrived at an average of 42.75 instead of 43.75 when averaging appellant's left ear audiogram readings of 35, 40, 45, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively. Consequently, the remainder of his calculations were incorrect.¹⁸

In his February 14, 2019 report, Dr. Powell reviewed appellant's audiometric test and found at 500, 1,000, 2,000, and 3,000 Hz losses of 30, 35, 55 and 60 dBs on the right, respectively; and 35, 40, 45 and 55 on the left, respectively. He added the losses of the right ear to arrive at 180 and averaged the total to get 45.¹⁹ After subtracting out a 25 dB fence, Dr. Powell multiplied the remaining 20 balance by 1.5 to calculate 30 percent. He added two percent for tinnitus to calculate 32 percent right ear monaural hearing loss. For the left ear, Dr. Powell added appellant's losses to arrive at 175 and averaged the total to get 43.75.²⁰ After subtracting out a 25 dB fence, he multiplied the remaining 18.75 by 1.5 to calculate 28.125 percent. Dr. Powell then added 2 percent for tinnitus to calculate 30.125 percent left ear monaural hearing loss. To calculate appellant's binaural hearing loss, he multiplied the left ear loss percent by five, adding the 32 percent right ear loss, and dividing the sum by six, which totaled 30.44, rounding down to 30 percent binaural hearing loss.²¹

The Board finds that Dr. Powell properly applied the standards of the A.M.A., *Guides* in evaluating appellant's hearing loss and his opinion is sufficiently well rationalized and based upon a proper factual and medical background. Dr. Powell correctly averaged appellant's left ear hearing loss at 43.75. He then correctly arrived at binaural hearing loss of 28.125, rather than the 26.625 incorrectly recorded by Dr. Pettit. After adding the two percent for tinnitus and rounding down, Dr. Powell properly arrived at a total binaural hearing loss impairment rating of 30 percent.²²

¹⁷ *Supra* note 3.

¹⁸ Using Dr. Pettit's calculations, the average of appellant's bilateral hearing loss is 27.19. Also, he incorrectly recorded 131.25 instead of 133.125 when he multiplied the left ear score of 26.625 by 5.

¹⁹ *Supra* note 13.

²⁰ *Id.*

²¹ The policy of OWCP is to round the calculated percentage of impairment to the nearest whole number. Results should be rounded for figures less than .5 and up for .5 and over. See *V.M.*, *supra* note 8; *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004).

²² See Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 2.808.5 (March 2017).

As he correctly calculated that appellant had 30 percent binaural hearing loss, the Board finds that appellant is entitled to an additional award of two percent. Accordingly, the November 1, 2019 schedule award shall be modified to reflect entitlement to an additional two percent permanent impairment, for a total binaural hearing loss of 30 percent. Upon return of the case file OWCP shall pay appellant an additional two percent impairment.

CONCLUSION

The Board finds that appellant has established that he has 30 percent binaural hearing loss. OWCP previously awarded 28 percent permanent impairment, and therefore, appellant is entitled to an additional schedule award for two percent permanent impairment for his binaural hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: July 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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