

due to factors of his federal employment. He noted that he first became aware of his condition on May 16, 2017 and first realized it was caused or aggravated by his federal employment on July 1, 2003. Appellant explained that, as a CBP officer, he worked around loud noises such as large crowds of people, cars, 18-wheeler trucks, and airplanes landing and taking off. He did not stop work.

In a development letter dated August 29, 2019, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It provided a questionnaire for his completion and requested that he submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how his employment duties caused or aggravated his medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. It afforded both parties 30 days to respond.

In an August 9, 2017 medical report, Dr. Jeremy Biggs, Board-certified in occupational medicine, provided appellant with the results of a May 16, 2017 audiogram evaluation performed by a physician with an illegible signature. He checked a box to indicate an "abnormal hearing -- baseline" and on review of the audiometric testing results, found at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 10, 5, 10, and 15 decibels (dBs) on the right, respectively; and 5, 0, 10, and 10 dBs on the left, respectively.

In a September 5, 2019 response to OWCP's questionnaire, appellant recounted his history of employment beginning in 2002 when he was assigned to the Port of Laredo, Texas. He listed the loud noises he was exposed to, such as airplanes landing and taking off, loud crowds of people and working in vehicle lanes inspecting cars and trucks. Appellant indicated that his hearing first began to get progressively worse in 2003 until 2017 when his hearing test came back abnormal. He noted that he had no hearing problems prior to his federal employment and no hobbies or daily activities that involved loud noises. Appellant acknowledged that the employing establishment provided earplugs during fire arm qualifications and private plane processing. He concluded by asserting that he is still exposed to these noises daily and that his hearing appears to be worsening.

On September 24, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and copy of the medical record, to Dr. John Edwards, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of his employment-related conditions.

In his October 15, 2019 medical report, Dr. Edwards reviewed the SOAF, history of injury and the medical evidence of record. He noted that appellant showed sensorineural hearing loss and recognized his description of severe tinnitus that interfered with his activities of daily living (ADLs). Dr. Edwards reviewed his audiometric testing results and, using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), found at 500, 1,000, 2,000, and 3,000 Hz losses of 20, 20, 25, and 35 dBs on the right, respectively; and 30, 25, 30, and 35 dBs on the left, respectively. He diagnosed bilateral

² A.M.A., *Guides* (6th ed. 2009).

sensorineural hearing loss and bilateral tinnitus. Dr. Edwards found zero percent monaural hearing loss in the right ear, eight percent monaural hearing loss in the left ear and one percent binaural hearing loss. He allowed four percent for tinnitus for a total of five percent binaural hearing loss. Dr. Edwards opined that appellant's sensorineural hearing loss, in part, was due to noise exposure he encountered during his federal employment and found that he reached maximum medical improvement (MMI) on October 15, 2019. He recommended yearly audiograms, hearing aid amplification and a tinnitus masker as needed.

By decision dated November 26, 2019, OWCP accepted appellant's occupational disease claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On November 26, 2019 OWCP referred the medical evidence of record and an updated SOAF to Dr. Jeffrey Israel, a Board-certified otolaryngologist, acting as an OWCP district medical adviser (DMA). It requested that the DMA review Dr. Edwards' medical report and provide an opinion regarding appellant's permanent impairment due to his bilateral sensorineural hearing loss and bilateral tinnitus under the standards of the sixth edition of the A.M.A., *Guides*.

On December 2, 2019 appellant filed a claim for a schedule award (Form CA-7).

In his December 3, 2019 medical report, Dr. Israel reviewed the SOAF, history of injury and medical evidence of record. He determined that the date of MMI was October 15, 2019, the date of appellant's latest audiogram, and concurred with Dr. Edwards' determination of five percent binaural hearing loss, with four percent allowed for tinnitus. Dr. Israel repeated Dr. Edwards' suggestions of yearly audiograms, noise protection for appellant's ears and authorization for hearing aids.

In a February 10, 2020 decision, OWCP granted appellant a schedule award for eight percent permanent loss of use of monaural left ear hearing loss. It found that he reached MMI on October 15, 2019. The period of the award was for 4.16 weeks to run during the period October 15 to November 13, 2019.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

concurrent in such adoption.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.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 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 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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of a disease or injury.¹³ 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.¹⁴

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.¹⁵

ANALYSIS

The Board finds that this case is not in posture for decision.

⁶ *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

⁷ 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).

⁸ A.M.A., *Guides* 250.

⁹ *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

¹⁰ *Id.*

¹¹ *Id.*

¹² *See V.M.*, *supra* note 6.

¹³ *See A.M.A.*, *Guides* 249.

¹⁴ *Id.*

¹⁵ *Reynoldo R. Lichtenberger*, 52 ECAB 462 (2001); *B.B.*, Docket No. 16-0512 (issued May 17, 2016).

OWCP properly referred appellant to Dr. Edwards for a second opinion examination to determine his entitlement to a schedule award for his hearing loss.¹⁶ Dr. Edwards' October 15, 2019 report reviewed appellant's audiogram findings and concluded that appellant's bilateral hearing loss and tinnitus were due to his workplace noise exposure. On December 3, 2019 Dr. Israel, serving as an OWCP DMA, reviewed Dr. Edwards' report and concurred with his findings and conclusions.

The Board finds that Dr. Edwards and Dr. Israel both properly applied the standardized procedures to the October 15, 2019 audiogram report to determine that appellant had developed five percent binaural hearing loss. Testing for the right ear at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 20, 20, 25, and 35 respectively, for a total loss of 100 dBs. Testing for the left ear at the same frequency levels revealed dB losses of 30, 25, 30, and 35 on the right, respectively and 30, 25, 30, and 35 dBs on the left, respectively, for a total loss of 120 dBs. The total dB losses were averaged by dividing by 4 to obtain an average hearing loss of 23.75 dBs in the right ear and 30 dBs in the left ear. After subtracting the 25 dB fence and multiplying by 1.5 (as explained above), 0 percent monaural hearing loss was found for the right ear and 7.5 percent monaural hearing loss was found for the left ear. The binaural loss of hearing was then determined by multiplying appellant's 0 percent right ear monaural hearing loss by 5 to get 0, then adding his 7.5 percent left ear monaural hearing loss and dividing the total by 6, which totaled 1.25, rounding down to 1 percent binaural hearing loss.¹⁷ Drs. Edwards and Israel both indicated that appellant's tinnitus interfered with his ADLs and allowed an additional four percent for his bilateral tinnitus, for a total binaural hearing loss of five percent.

However, OWCP did not include appellant's degree of impairment for his accepted bilateral tinnitus when it calculated his schedule award. As noted above, the A.M.A., *Guides* provide that, if tinnitus interferes with ADLs, such as sleep, reading, enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹⁸ OWCP did not include appellant's four percent tinnitus impairment rating when calculating his total schedule award and, therefore, determined that his eight percent left ear monaural hearing loss would result in greater compensation than the calculation for his one percent binaural hearing loss.¹⁹

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.²⁰ While the claimant has the burden of proof to establish entitlement

¹⁶ *Supra* note 13.

¹⁷ 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.*, *supra* note 6; *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁸ *Supra* note 13.

¹⁹ *Supra* note 15.

²⁰ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *Vanessa Young*, 56 ECAB 575 (2004).

to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.²¹

As OWCP did not include appellant's four percent tinnitus impairment rating when it calculated his schedule award, the Board finds that it did not properly develop his schedule award claim with regard to whether his diagnosed tinnitus warranted an increased impairment rating. This case must therefore be remanded to OWCP for recalculation of appellant's hearing loss pursuant to OWCP procedures. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 26, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²¹ *E.S.*, Docket No. 18-1312 (issued April 3, 2020).