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A.I., Appellant)	
)	
and)	Docket No. 25-0457
)	Issued: May 5, 2025
DEPARTMENT OF DEFENSE, NATIONAL)	
SECURITY AGENCY, Fort Meade, MD,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 4, 2025 appellant filed a timely appeal from a March 27, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether OWCP properly determined appellant's pay rate for schedule award purposes.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.² The relevant facts are as follows.

On September 14, 2018 appellant, then a 63-year-old linguist and analyst, filed an occupational disease claim (Form CA-2) alleging that he developed progressive hearing loss due to factors of his federal employment, including the exposure to high decibel noisy equipment during his workday. He noted that he first became aware of his condition and its relation to his federal employment on April 2, 1986. Appellant noted that April 2, 1986 represents the baseline from when his hearing began to decline and thereafter, he underwent several hearing tests which revealed progressive hearing loss. On the reverse of the claim form, an employing establishment supervisor indicated that he had retired on December 31, 2018.

In an undated response to OWCP's November 9, 2018 hearing loss questionnaire, appellant asserted that from May 1986 through May 2015 he used audio headsets and worked in proximity to high-decibel telecommunications equipment and servers. He indicated that his last exposure to a high-decibel work environment related to his federal employment was in May 2015. Appellant further noted that he first became aware of the progressive nature of his hearing loss on July 13, 2018 when he underwent hearing testing at the employing establishment's medical facility.

On March 20, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and an otologic evaluation questionnaire to Dr. Douglas McCorkle, a Board-certified otolaryngologist, for a second opinion evaluation. The SOAF indicated that his last exposure to a high-decibel work environment related to federal employment was in May 2015.

In his April 15, 2019 report, Dr. McCorkle reviewed the SOAF and completed the evaluation questionnaire. He noted that appellant was exposed to noise eight hours per day until May 2015. As of May 2015, Dr. McCorkle continued to be employed as an independent contractor for the employing establishment with no ongoing noise exposure. He diagnosed bilateral hearing loss, without tinnitus, due to noise exposure during appellant's federal employment. Dr. McCorkle reviewed the audiogram and noted that it demonstrated losses of 15, 20, 15, and 45 decibels (dBs) on the left and 10, 25, 25, and 50 dBs on the right at 500, 1,000, 2,000, and 3,000 hertz (Hz), respectively.

By decision dated May 7, 2019, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

Thereafter, OWCP referred the medical record and a SOAF to its district medical adviser (DMA), Dr. Charles Pettit, a Board-certified otolaryngologist, for schedule award purposes. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ the DMA reviewed the April 15, 2019 audiogram on

² Docket No. 21-0248 (issued April 19, 2023).

³ A.M.A., *Guides* (6th ed. 2009).

May 21, 2019 and found that appellant had a right monaural loss of 4 percent,⁴ and a left monaural loss of 0.00 percent for a binaural loss of 0.625 percent. He determined that appellant reached maximum medical improvement (MMI) on April 15, 2019, the date of the most recent audiogram examination. Dr. Pettit further noted that appellant had not been exposed to excess noise since May 2015.

On July 3, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award. On the reverse side of the form, the employing establishment listed his date-of-injury pay rate as \$28,139.00 per year and \$164,200.00 per year when he stopped work and noted that he retired on December 31, 2018. Thereafter, OWCP received a notification of personnel action (Standard Form (SF) 50) dated December 31, 2018 noting an adjusted basic pay rate of \$164,200.00 per year.

In a schedule award memorandum dated July 30, 2020, OWCP found that payment of right ear hearing loss was more advantageous to appellant, as the 4 percent rating for the right ear resulted in 2.08 weeks of compensation, while a 0.625 percent binaural rating resulted in only 2.00 weeks of compensation. It utilized his weekly pay rate at the time of his retirement of \$3,157.69 based on an annual salary of \$164,200.0. OWCP found that appellant reached MMI on April 15, 2019.

By decision dated August 5, 2020, OWCP granted appellant a schedule award for four percent monaural hearing loss of the right ear.⁵ The period of the award ran for 2.08 weeks from April 15 through 29, 2019 and the effective date of his pay rate was December 30, 2018. OWCP further determined that appellant was entitled to the “maximum comp[ensation] rate (75 percent of GS-15 Step 10)” of \$1,998.64 per week for total compensation for the period covered of \$4,157.17.

On December 8, 2020 appellant appealed to the Board. By decision dated April 19, 2023,⁶ the Board found that appellant had not met his burden of proof to establish greater than four percent monaural loss of hearing in the right ear, for which he previously received a schedule award. The Board further found that the case was not in posture for decision with regard to his pay rate for schedule award purposes. The Board remanded the case to OWCP to confer with the employing establishment to determine the date of appellant’s last exposure to hazardous noise and the corresponding pay rate, to be followed by a *de novo* decision.

In a November 1, 2023 letter to the employing establishment, OWCP requested the date of appellant’s last exposure to hazardous noise.

⁴ 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.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). *See also* Federal (FECA) Procedure Manual, Part -- 3 Medical, *Schedule Awards*, Chapter 3.700.4b(2)(b) (January 2010).

⁵ *Id.*

⁶ *Supra* note 2.

On July 30, 2024 G.B., an employing establishment representative, indicated that the date of appellant's last exposure to hazardous noise was May 15, 2015.

In e-mail correspondence dated August 16, 2024, G.B. reported appellant's pay rate as of May 15, 2015 as \$155,705.00 annually, \$2,984.00 weekly, or \$74.61 per hour.

By *de novo* decision dated March 27, 2025, OWCP determined that the effective date of appellant's pay rate was May 15, 2015, the date of his last exposure to hazardous noise. It also noted that there was no change in the amount of the schedule award as he was still entitled to the maximum compensation rate of \$1,998.64 per week and total compensation for the period covered of \$4,157.17 for 2.08 weeks/14.56 days of compensation.

LEGAL PRECEDENT

Section 8107 of FECA provides that schedule award compensation for permanent impairment of a scheduled member shall be based on the employee's monthly pay.⁷ Such compensation is to be based on the pay rate as determined under section 8101(4) which defines monthly pay as "[t]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."⁸

Section 8112 of FECA provides that the monthly rate of compensation for disability, including augmented compensation for eligible dependents, may not be more than 75 percent of the monthly pay of the maximum rate of pay for a GS-15 employee.⁹ The only situation in which the maximum compensation rate may be exceeded is if the employee's disability was a result of an assault which occurs during an assassination or attempted assassination of a federal official described under section 351(a) or 1751(a) of Title 18, and was sustained in the performance of duty.¹⁰ OWCP's implementing regulation provides that the maximum rate in effect during the period of entitlement is compared to the claimant's weekly compensation rate, and that the allowable compensation rate for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule."¹¹ OWCP's procedures provide that the maximum compensation rates for disability compensation also apply to schedule

⁷ 5 U.S.C. § 8107(a).

⁸ *Id.* at § 8101(4).

⁹ *Id.* at § 8112(a).

¹⁰ *Id.* at § 8112(b).

¹¹ 20 C.F.R. § 10.406(a). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.14 and Exhibit 2 (Maximum Compensation Rates) (February 2013). Exhibit 2, associated with Chapter 2.901.14, delineates figures for maximum compensation rates to be paid during various periods.

award compensation.¹² The computerized compensation management application is utilized to automatically calculate the maximum compensation rate when payments are entered.¹³

The Board has held that where an injury is sustained over a period of time, the date of injury is the date of last exposure to those work factors causing injury.¹⁴ Applying this principle to schedule award claims, the Board has held that the date of injury is the date of the last exposure which adversely affects the impairment because every exposure which has an adverse effect (an aggravation) constitutes an injury.¹⁵ In a case where a claimant continues to be exposed to injurious work factors and the medical evidence documents continued worsening of the claimed condition, OWCP selects the date of last exposure to injurious work factors as the date of injury.¹⁶

When an injury does not result in disability, but compensation is payable for permanent impairment, a beneficiary is eligible for cost-of-living adjustments under section 8146(a) of FECA where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.¹⁷ OWCP procedures provide that in occupational hearing loss claims, the consumer price index (CPI) start date is the date of MMI or date of last audiogram.¹⁸

ANALYSIS

The Board finds that OWCP properly determined appellant's pay rate for schedule award purposes.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the August 5, 2020 decision because the Board considered that evidence its April 19, 2023 decision. The Board previously determined that appellant had not met his burden of proof to establish greater than 4 percent monaural loss of hearing in the right ear.¹⁹ Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.²⁰

¹² See *id.* See also *id.* at Chapter 2.808.7g (February 2013); *G.J.*, Docket No. 18-1292 (issued March 13, 2019).

¹³ See Federal (FECA) Procedure Manual, *supra* note 11 at Chapter 2.901.14e (February 2013).

¹⁴ *D.A.*, Docket No. 18-1105 (issued January 10, 2019); *J.S.*, Docket No. 17-1277 (issued April 20, 2018); *Sherron A. Roberts*, 47 ECAB 617 (1996).

¹⁵ *D.A., id.*; *Barbara A. Dunnavant*, 48 ECAB 517 (1997).

¹⁶ *M.P.*, Docket No. 17-1736 (issued February 14, 2018); *K.G.*, Docket No. 15-1476 (issued May 6, 2016); *G.L.*, Docket No. 12-1795 (issued September 24, 2013).

¹⁷ 20 C.F.R. § 10.420(b). See also *D.G.*, Docket No. 16-1855 (issued August 28, 2017).

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900 Exhibit 1 Determining Effective Pay Rate Date for Schedule Awards (August 2012).

¹⁹ *Supra* note 2.

²⁰ *M.V.*, Docket No. 24-0092 (issued March 28, 2024); *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

On remand, OWCP conferred with the employing establishment to determine the date of appellant's last exposure to hazardous noise. It then properly utilized May 15, 2015, the date of his last exposure to hazardous noise, to calculate the schedule award.²¹ Appellant's weekly pay rate as of May 15, 2015 was \$2,984.00, which entitled him to the maximum compensation amount allowed under FECA.²² As the date of MMI, April 15, 2019, was more than one year after the impairment began, he was entitled to a CPI start date of April 15, 2019,²³ which yielded a maximum compensation rate of \$1,998.64 per week.²⁴ Accordingly, the Board finds that OWCP properly determined appellant's pay rate for schedule award purposes.²⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly determined appellant's pay rate for schedule award purposes.

²¹ *Supra* note 17.

²² *Supra* notes 12, 13.

²³ *Supra* note 19.

²⁴ FECA Bulletin No. 19-03 (issued May 22, 2019).

²⁵ The Board notes that on appeal, appellant asserts that he is entitled to ongoing payments annually beyond the 2.08 weeks of compensation he was awarded. As the Board noted in its April 19, 2023 decision, Section 8107 of FECA provides that a claimant is entitled to up to 52 weeks of compensation for 100 percent loss of hearing in one ear. 5 U.S.C. § 8107(c). As four percent of 52 weeks equates to a total of 2.08 weeks, appellant is not entitled to any additional payments.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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