

**United States Department of Labor
Employees' Compensation Appeals Board**

W.C., Appellant

and

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Vicksburg, MS, Employer**

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**Docket No. 11-753
Issued: October 12, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2011 appellant filed a timely appeal from a January 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has an employment-related ratable hearing loss.

FACTUAL HISTORY

On June 3, 2010 appellant, then a 63-year-old tying tool repairer leader, filed an occupational claim (Form CA-2) alleging that he sustained binaural hearing loss as a result of his federal employment. In a statement dated June 22, 2010, he advised that he had worked various

¹ 5 U.S.C. § 8101 *et seq.*

positions at the employing establishment since 1964. Appellant indicated that he was exposed to noise constantly but wore ear plugs and ear muffs.

The record contains a February 22, 2010 audiogram, providing results for the right ear. The results for the left ear are illegible and no calibration information was provided. The form report contains the letterhead of Dr. Alfred Windham.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Bryan Clay, an otolaryngologist, for examination. In a Form CA-1332 report (outline for otologic evaluation), Dr. Clay indicated that appellant did have chronic exposure to loud noises, diagnosed high frequency hearing loss and checked a box that the hearing loss was “due” to noise exposure in federal employment. An audiogram dated December 15, 2010, showed for the right ear, hearing levels of 5, 10, 25 and 30 decibels (dB) at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hertz (Hz). For the left ear, the results were 0, 10, 40 and 50 at the same frequencies. The report indicated that the equipment was calibrated on November 18, 2010.

In a Form CA-51 report dated January 5, 2011, an OWCP medical adviser reviewed the audiologic results and found that appellant had a zero percent binaural hearing loss based on the December 15, 2010 audiogram.

By decision dated January 7, 2011, OWCP found that appellant was not entitled to a schedule award for hearing loss.²

LEGAL PRECEDENT

The schedule award provision 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. 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.⁵ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁶ OWCP procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.⁷

² OWCP accepted hearing loss as an employment-related condition.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ 20 C.F.R. § 10.404 (1999).

⁷ FECA Bulletin No. 09-03 (March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

Pursuant to the A.M.A., *Guides*, the frequencies of 500, 1,000, 2,000 and 3,000 Hz are used and the levels at each frequency are added together and averaged.⁸ Then, the “fence” of 25 dB is deducted because, as the A.M.A., *Guides* points out, levels below 25 dB 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

ANALYSIS

OWCP accepted that appellant was exposed to noise in his federal employment and sustained high frequency hearing loss. With respect to entitlement to a schedule award for hearing loss, however, the medical evidence must establish a ratable hearing loss in accord with the provisions of the A.M.A., *Guides*. The Board notes that appellant had initially submitted an audiogram dated February 22, 2010. This audiogram is not sufficient evidence to establish the degree of hearing loss. The results for the left ear were illegible, the audiogram provided no calibration data and there was no accompanying otologic examination report from Dr. Windham.¹³ This evidence did not meet OWCP requirements for hearing loss medical evidence.

OWCP properly referred appellant to Dr. Clay for a second opinion evaluation.¹⁴ The accompanying audiogram noted that the equipment was properly calibrated and provided results for the right ear of dB levels totaling 70 at the designated frequencies of 500, 1,000, 2,000 and 3,000 Hz. Seventy was divided by 4 to find 17.50. Since the fence of 25 dB must be deducted, there is no ratable hearing loss for the right ear. The left ear loss of 100 was divided 4 to find an average loss of 25. Again the deduction of the 25 dB fence resulted in no hearing loss. This report was reviewed by an OWCP medical adviser who found no ratable hearing loss of the need for hearing aids.

⁸ A.M.A., *Guides* 250.

⁹ *Id.* at 250, Table 11.1.

¹⁰ *Id.*

¹¹ *Id.* at 251-53, Table 11-2.

¹² *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition granted*, Docket No. 01-1570 (issued August 13, 2002).

¹³ The requirements for medical evidence as to hearing loss include an audiogram that is performed on equipment properly calibrated in accord with the protocol established in the Professional Services Board Manual of the American Speech-Language and Hearing Association. In addition, the audiologic testing must be accompanied by an otologic examination. See *Vernon Brown*, 54 ECAB 376 (2003); Federal (FECA) Procedure Manual, *supra* note 7, *Requirements for Medical Reports*, Chapter 3.600.8(a) and Exhibit 4 (March 2010).

¹⁴ When the medical evidence submitted does not meet OWCP requirements, the claimant should be referred for an examination by a qualified specialist. *Vernon Brown*, *id.*

The Board finds that the weight of the probative medical evidence does not establish a ratable hearing loss. Applying the A.M.A., *Guides* to the relevant medical evidence of record, there is no ratable hearing loss and OWCP properly found that appellant was not entitled to a schedule award in this case. The Board notes that OWCP did accept an employment-related hearing loss. Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related hearing loss resulting in a permanent impairment.

CONCLUSION

The Board finds that the evidence of record does not establish a ratable employment-related hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2011 is affirmed.

Issued: October 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board