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R.R., Appellant)	
)	
and)	Docket No. 12-1840
)	Issued: February 14, 2013
DEPARTMENT OF THE AIR FORCE,)	
WARNER ROBINS GA WRAMA,)	
RANDOLPH AIR FORCE BASE, TX, Employer)	
)	

Case Submitted on the Record

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On August 29, 2012 appellant filed a timely appeal from an August 6, 2012 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 issues are: (1) whether appellant met his burden of proof to establish that he sustained a ratable hearing loss entitling him to a schedule award; and (2) whether OWCP properly exercised its discretion in denying hearing aids.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 16, 2012 appellant, then a 51-year-old aircraft sheet metal mechanic leader, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of noise exposure from federal employment. He first became aware of his hearing loss and of its relationship to his employment on February 16, 2012. Appellant notified his supervisor on that same date.

In an undated narrative statement, appellant reported that he began working as a sheet metal mechanic in April 1983. He was exposed to noise from air compressors, air conditioners, generators, lights, heaters, air start units, power units, air craft engines, pneumatic drills, dive grinders, rivet guns and air vacuum cleaners for four to eight hours per day, five days a week. Appellant stated that earplugs were provided and he first began to notice hearing loss in mid-2009. He further noted that he was still exposed to employment-related noise and had never filed another hearing loss workers' compensation claim.

Hearing conservation data, medical notes and audiograms were submitted for the period February 22, 1983 to April 3, 2012. In a control summary table for hazardous noise from producing equipment in the work center, potential exposure was found to be over 85 decibels (dBA). An official position description for a sheet metal mechanic leader was also submitted.

By letter dated May 4, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, whether he wore ear protection and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

Noise Dosimeter survey reports were submitted dated December 23, 2004 to February 9, 2010 documenting the dBA levels of appellant's employment-related noise exposure, which ranged from 82 to 129 dBA.

In a May 22, 2012 Department of the Air Force memorandum, the employing establishment reported that appellant worked as a sheet metal mechanic from April 1983 to the present where he was exposed to loud noises through the use of various pneumatic tools and vacuum cleaners. Sound level surveys and noise dosimetry studies revealed that from April 1983 to June 1993, appellant's employment-related noise exposure ranged from 82 to 129 dBA. From June 1993 to January 2003, noise exposure ranged from 89 to 121 dBA. From February 2003 to the present, appellant's employment-related noise exposure ranged from 85 to 107 dBA. It was further noted that appellant was required to wear dual hearing protection consisting of earplugs and earmuffs during the riveting process and when working in the controlled area.

In a June 26, 2012 statement of accepted facts, OWCP reported that appellant held various federal positions as a sheet metal mechanic from April 1983 to the present where he was exposed to noise levels ranging from 82 to 129 dBA. Appellant began his federal employment at age 24 and reported no noise exposure recreationally or from military or nonfederal employment. The employing establishment confirmed hazardous noise exposure and it was noted that appellant wore foam earplugs for hearing protection.

OWCP referred appellant to Dr. Kenneth Walker, a Board-certified otolaryngologist, for a second opinion evaluation on July 19, 2012. It provided a statement of accepted facts addressing appellant's federal work duties as a sheet metal mechanic and the types of employment-related noise to which he was exposed. Dr. Walker reported that appellant had essentially normal hearing at the beginning of his federal employment noise exposure with a mild drop at 6,000 hertz (Hz) in the left ear. He noted a history of no known ototoxic medication, diabetes or ear surgery. An audiogram was completed on July 19, 2012 which revealed the following dBA losses at 500, 1000, 2000 and 3000 Hz: 10, 10, 10 and 15 for the right ear and 20, 15, 10 and 15 for the left ear. Speech discrimination thresholds were 15 dBA bilaterally and the auditory discrimination score was 96 percent for the right ear and 88 percent for the left ear. Dr. Walker diagnosed high frequency sensorineural noise-induced hearing loss in the left ear which was due to appellant's federal civilian employment and was in excess of what would normally be predicated on the basis of presbycusis. He further stated that appellant's workplace exposure as a sheet metal mechanic leader was sufficient as to intensity and duration to have caused the hearing loss in question. Dr. Walker also diagnosed tinnitus but noted normal hearing in the right ear. He recommended ear protection, annual hearing evaluations and a hearing aid evaluation.

On July 31, 2012 OWCP referred the case file along with Dr. Walker's report to a district medical adviser (DMA) to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement.

In an August 1, 2012 report, the medical adviser determined that, in accordance with the sixth edition of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in the left ear.² He noted that no hearing loss was documented in appellant's right ear and that hearing aids should not be authorized. The date of maximum medical improvement was noted as July 19, 2012, the date of appellant's last audiology testing.

By decision dated August 6, 2012, OWCP accepted appellant's claim for left ear hearing loss due to employment-related noise exposure. It noted that he did not have hearing loss in his right ear. OWCP further found that appellant's left ear hearing loss was not severe enough to be

² A.M.A., *Guides* (2009).

considered ratable and thus, was entitled to zero percent schedule award.³ Hearing aids were not authorized.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA⁴ and its implementing regulations 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 A.M.A., *Guides* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁵

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 cycles per second, the losses at each frequency are added up and averaged. Then, the fence of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ 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 the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁷

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.⁸ The A.M.A., *Guides* state that if tinnitus interferes with activities of daily living (ADLs), including sleep, reading (and other tasks

³ The Board notes that OWCP's August 6, 2012 decision mistakenly referenced the fifth edition of the A.M.A., *Guides* (2001) as the standard used to determine appellant's schedule award. The DMA, however, correctly utilized the sixth edition of the A.M.A., *Guides*. The Board finds that this inaccuracy by the claims examiner in noting the incorrect edition of the A.M.A., *Guides* was harmless error. The context of the August 1, 2012 DMA report clearly establishes that appellant's schedule award was properly calculated under the sixth edition of the A.M.A., *Guides*.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ See A.M.A., *Guides* 250.

⁷ See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁸ See A.M.A., *Guides* 249.

requiring concentration), enjoyment of quiet recreation and emotional well being, up to five percent may be added to a measurable binaural hearing impairment.⁹

ANALYSIS -- ISSUE 1

Appellant filed a claim for hearing loss and was referred to Dr. Walker for a second opinion examination. After reviewing the statement of accepted facts and medical file, conducting a thorough physical evaluation and obtaining an audiogram on July 19, 2012, Dr. Walker diagnosed high frequency sensorineural noise-induced hearing loss in the left ear. OWCP's medical adviser concurred with this finding and further concluded that appellant had no ratable hearing loss to warrant a schedule award or hearing aids. By decision dated August 6, 2012, OWCP accepted appellant's claim for left ear hearing loss, but denied a schedule award and authorization for hearing aids.

The Board finds that OWCP properly denied appellant's schedule award claim. According to the audiometry obtained on July 19, 2012, his hearing thresholds were 20, 15, 10 and 15 on the left and 10, 10, 10 and 15 for the right ear. Dr. Walker and the DMA found that appellant only suffered from left ear hearing loss while right ear audiometry data revealed normal hearing. The left ear hearing thresholds of 20, 15, 10 and 15 total 60 dBA for an average of 15 dBA. Because this average is below the fence of 25 dBA, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.¹⁰ This does not mean that he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Thus, appellant's left ear hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's left ear nonratable hearing loss.

While both Dr. Walker and an OWCP medical adviser also concluded that appellant had no hearing loss in the right ear, the Board will modify this finding to reflect that he has no ratable hearing loss of the right ear. The audiogram of July 19, 2012 does reflect some hearing loss of the right ear, but the total loss of 45 dBA, with an average of 11.25 dBA, results in a finding of no ratable impairment after the fence of 25 dBA is subtracted. There is no evidence of record that this nonratable right ear hearing loss was causally related to factor other than to appellant's employment.

The Board further finds that OWCP properly denied a schedule award for tinnitus.¹¹ FECA does not list tinnitus in the schedule of eligible members, organs or functions of the body. Therefore, no claimant may directly receive a schedule award for tinnitus. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus

⁹ *Id.* R.H., Docket No. 10-2139 (issued July 13, 2011); *see also* Robert E. Cullison, 55 ECAB 570 (2004).

¹⁰ *See* L.F., Docket No. 10-2115 (issued June 3, 2011).

¹¹ *Id.*

interferes with ADLs, up to five percent may be added to a measurable binaural hearing impairment.¹² The Board has repeatedly held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.¹³ Although Dr. Walker's June 19, 2012 report diagnosed tinnitus, as appellant's hearing loss is not ratable, the Board will affirm OWCP's August 6, 2012 decision finding that he was not entitled to a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduces the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁴ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.¹⁵ Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence of record supports that appellant is not entitled to hearing aids. There is no medical evidence from a physician recommending that he be provided with hearing aids or any other medical treatment for his employment-related hearing loss. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award. The Board also finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

¹² See A.M.A., *Guides* 249.

¹³ See *Richard Larry Enders*, 48 ECAB 184 (1996).

¹⁴ See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹⁵ 5 U.S.C. § 8103.

¹⁶ See *F.D.*, Docket No. 10-1175 (issued January 4, 2011), Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 14, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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