

FACTUAL HISTORY

On December 4, 2009 appellant, then a 50-year-old rigger supervisor, filed an occupational disease claim Form CA-2 alleging that he sustained a loss of hearing in both ears due to high noise levels in the performance of duty.

By letter dated December 22, 2009, OWCP advised appellant of the evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment provide copies of appellant's employment records and medical examination pertaining to hearing or ear problems, including preemployment examination and all audiograms.

Subsequently, appellant submitted evidence demonstrating that he was employed as a rigger at the employing establishment from 1987 to 2010 and that he was exposed to noise from various sources during that period. In addition, he submitted a series of audiometric results from testing through the hearing conservation program for the period between 1987 and 2007.

OWCP referred appellant to Dr. Richard W. Seaman, a Board-certified otolaryngologist, who in a December 10, 2009 medical report diagnosed noise-induced bilateral hearing loss and left-ear tinnitus. Dr. Seaman indicated that appellant's high frequency hearing loss was employment related and his tinnitus was related to prior employment. He reported that appellant had zero percent left ear, right ear and binaural hearing loss, zero percent tinnitus rating and recommended bilateral hearing aids.

By letter dated April 23, 2010, OWCP sent a request for an addendum to his December 4, 2009 medical report, together with a statement of accepted facts, to Dr. Seaman. In a May 10, 2010 addendum, Dr. Seaman reported that appellant's hearing loss was related to his federal employment and hearing aids were recommended.

OWCP accepted appellant's claim for bilateral hearing loss on May 20, 2010 and authorized his request for bilateral hearing aids on June 3, 2010.

On June 1, 2010 appellant filed a claim for a schedule award Form CA-7.

On June 8, 2010 OWCP reviewed Dr. Seaman's report and the audiometric test of December 10, 2009. OWCP's medical adviser concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), appellant had no ratable hearing loss.

By decision dated July 6, 2010, OWCP denied appellant's schedule award claim finding that his hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² 5 U.S.C. §§ 8101-8193.

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* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

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 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁴ 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.⁵

ANALYSIS

On appeal, appellant contends that the rating system used to determine that his hearing loss and tinnitus were not ratable was based on incorrect frequencies.

Dr. Seaman reported that appellant sustained employment-related noise-induced bilateral hearing loss and left-ear tinnitus, unrelated to his federal employment.

The Board finds that OWCP's medical adviser properly applied OWCP's standardized procedures to the December 10, 2009 audiogram. Testing for the right ear revealed decibel losses of 10, 5, 5 and 10 respectively. These decibel losses were totaled at 30 and divided by 4 to obtain the average hearing loss per cycle of 7.5. The average of 7.5 was then reduced by the 25 decibel fence to equal 0 decibels for the right ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the right ear. Testing for the left ear revealed decibel losses of 0, 5, 10 and 35 respectively. These decibel losses were totaled at 50 and divided by 4 to obtain the average hearing loss per cycle of 12.5. The average of 12.5 was then reduced by 25 decibels to equal 0 decibels for the left ear. The 0 was multiplied by 1.5 resulting in a 0 percent loss for the left ear. The Board finds that OWCP's medical adviser applied the proper standards to the findings stated in Dr. Seaman's December 10, 2009 report and accompanying audiogram. The result is a zero

³ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ *See A.M.A., Guides* 250.

⁵ *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).

percent binaural hearing loss in the right and left ears, which is not ratable. Therefore, appellant's hearing loss is not compensable for schedule award purposes.⁶

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 of injury."⁷ The A.M.A., *Guides* state that "if tinnitus interferes with [Activities of Daily Living (ADLs)], including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well being, up to five percent may be added to a measurable binaural hearing impairment."⁸ Dr. Seaman opined that appellant's left-ear tinnitus was not related to factors of his federal employment and did not provide rationalized medical opinion evidence to establish that it interfered with his ADLs. Nonetheless as appellant's hearing loss was not measurable it does not meet the requirements for the five percent enhancement for tinnitus.

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.

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes.

⁶ *L.S.*, 57 ECAB 725 (2006).

⁷ *See A.M.A., Guides* 249.

⁸ *Id.* *See also R.D.*, *supra* note 3; *S.G.*, 58 ECAB 383 (2007); *Robert E. Cullison*, 55 ECAB 570 (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board