

FACTUAL HISTORY

Appellant, a 55-year-old medical equipment repairman, filed an occupational disease claim (Form CA-2) on February 5, 2010, alleging that he sustained a hearing loss in his left ear caused by factors of his federal employment. While working at the employing establishment since December 1994, he has been exposed to noise from boiler plants, chiller plants and emergency generator rooms. Appellant was not given hearing protection. He submitted results of audiograms dated May 1995 to December 2010, which showed varying degrees of left-sided hearing loss.

In order to determine whether appellant had any permanent impairment in his left ear stemming from his federal employment, OWCP referred him for a second opinion examination with Dr. David L. Hatfield, a Board-certified otolaryngologist. In a May 28, 2010 report, which included an evaluation of his hearing loss, Dr. Hatfield found that appellant had no ratable hearing loss in the left ear. An audiogram dated May 27, 2010, with an attached calibration certificate, showed hearing levels of 10, 10, 20 and 20 decibels on the left at 500, 1,000, 2,000 and 3,000 hertz (Hz), respectively. Dr. Hatfield found based on the audiogram results that appellant had a hearing loss of zero percent in the left ear pursuant to the sixth edition the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He diagnosed sensorineural hearing loss in the left ear compatible with noise exposure. Dr. Hatfield stated that appellant's workplace exposure was of sufficient intensity and duration to have caused and/or aggravated noise-induced hearing loss. He further opined that he was not a candidate for hearing aids at the time of his evaluation.

In a June 18, 2010 report, an OWCP medical adviser, after reviewing the results of the May 27, 2010 audiogram, determined that appellant had a nonratable work-related hearing loss in the left ear. The medical adviser checked a box indicating that appellant would not benefit from hearing amplification.

By decision dated July 21, 2010, OWCP accepted appellant's claim for monaural sensorineural hearing loss in the left ear. It indicated that he was not entitled to a schedule award because the medical evidence did not establish that his left-sided hearing loss was ratable. OWCP also found that appellant did not require the use of hearing aids.

By letter dated August 6, 2010, appellant requested an oral hearing. On September 28, 2010 OWCP sent a notice of hearing to him and provided procedural information regarding the hearing. The notice stated that a hearing would be held on November 3, 2010 at 2:15 p.m. Appellant did not appear at the hearing.

By decision dated November 29, 2010, OWCP determined that appellant had abandoned his request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA² and its implementing regulations³ 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left-sided hearing loss due to noise exposure from his federal employment.¹⁰ The issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides*, entitling him to a schedule award. Dr. Hatfield provided an April 7, 2010 audiogram, with a recent calibration certificate, showing hearing levels of 10, 10, 20 and 20 decibels on the left at 500, 1000, 2000 and 3000 Hz, respectively, to find an average of 15 on the left. The average of 15 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals zero decibels. Based on this test

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.700.4(b) (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See Donald Stockstad*, 53 ECAB 301 (2002), petition for recon. granted (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

¹⁰ *See Federal (FECA) Procedure Manual*, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

Dr. Hatfield determined that appellant did not sustain a ratable monaural hearing loss on the left.¹¹ The Board finds that he properly applied the A.M.A., *Guides* to the May 27, 2010 audiogram to determine that appellant did not sustain a ratable hearing loss for schedule award purposes.¹²

Although appellant submitted results from audiometric testing performed from May 1995 to December 2010, these audiograms are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy his burden of proof.¹³ Dr. Hatfield provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in his employment. The Board finds that Dr. Hatfield's report represents the weight of the evidence.

An OWCP medical adviser properly applied the applicable standards of the A.M.A., *Guides*, to determine that appellant did not have a work-related ratable hearing loss in his left ear. The July 21, 2010 decision is affirmed.

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

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. Both Dr. Hatfield and an OWCP medical adviser found that appellant did not require

¹¹ A.M.A., *Guides* 249-51.

¹² *See S.G.*, 58 ECAB 383 (2007).

¹³ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹⁴ 5 U.S.C. § 8103.

¹⁵ OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988).

hearing aids. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.¹⁶

LEGAL PRECEDENT -- ISSUE 3

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of an OWCP's procedure manual provides in relevant part:

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [district Office]. In cases involving precoumpment hearings, [the Branch of Hearings and Review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [district Office].

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if [the Branch of Hearings and Review] can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”¹⁷

ANALYSIS -- ISSUE 3

In finding that appellant abandoned his August 6, 2010 request for a hearing, OWCP noted that a hearing had been scheduled for November 3, 2010, that he received written notification of the hearing 30 days in advance, that he failed to appear and that the record contained no evidence that he contacted OWCP to explain his failure to attend the hearing. Based on the evidence of the record, he did not request postponement of the hearing date, failed to appear at the scheduled hearing and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as

¹⁶ This does not preclude appellant from seeking authorization for hearing aids or other appropriate medical treatment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990); *Raymond VanNett*, 44 ECAB 480 (1993).

¹⁷ Federal (FECA) Procedure Manual, *supra* note 10, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

specified in Chapter 2.1601.6(e) of OWCP's procedure manual, OWCP properly found that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

CONCLUSION

The Board finds that appellant has not established a ratable hearing loss in his left ear entitling him to a schedule award. The Board also finds that OWCP did not abuse its discretion in denying authorization for hearing aids. The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the November 29 and July 21, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 28, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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