



submitted information concerning appellant's employment history and noise exposure and audiograms conducted between November 7, 1996 and October 20, 2011.

On January 19, 2012 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Richard Dawson, a Board-certified otolaryngologist, for a second opinion as to whether appellant sustained hearing loss causally related to his federal employment and, if so, whether the loss was ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a February 1, 2012 report, Dr. Dawson reported findings on examination and diagnosed bilateral sensorineural hearing loss, which he opined was in excess of what would normally be predicated on the basis of presbycusis. An audiogram conducted on that date reflected testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and showed the following decibel losses: 5, 5, 15 and 70 in the right ear and 10, 5, 10 and 55 in the left ear. Dr. Dawson opined that the diagnosed hearing loss was causally related to appellant's history of noise exposure in his federal employment and recommended binaural hearing aids.

OWCP submitted the medical record to a district medical adviser (DMA) for his review. On February 22, 2012 the DMA reviewed Dr. Dawson's findings and agreed with his determination that appellant had a bilateral sensorineural hearing loss due to employment-related noise exposure, but that the loss was not ratable under the A.M.A., *Guides*. He stated that appellant reached maximum medical improvement on January 30, 2012 and recommended hearing aids.

On February 24, 2012 OWCP accepted appellant's claim for bilateral sensorineural hearing loss. By decision dated February 24, 2012, it found that the medical evidence of record established that his hearing loss was not ratable under the sixth edition of the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>2</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>3</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>4</sup>

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<sup>2</sup> FECA provides that, for complete or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks compensation. 5 U.S.C. § 8107(c)(13).

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, 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. 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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>5</sup>

### ANALYSIS

The Board finds that the evidence of record does not establish that appellant sustained a ratable hearing loss.

In his February 1, 2012 second opinion report, Dr. Dawson indicated that he had reviewed OWCP's statement of accepted facts, the medical record and appellant's job history. He diagnosed bilateral sensorineural hearing loss, which he opined was in excess of what would normally be predicated on the basis of presbycusis. An audiogram conducted on that date reflected testing at 500, 1,000, 2,000 and 3,000 Hz and showed the following decibel losses: 5, 5, 15 and 70 in the right ear and 10, 5, 10 and 55 in the left ear. Dr. Dawson opined that the diagnosed hearing loss was causally related to appellant's history of noise exposure in his federal employment and recommended binaural hearing aids. OWCP's medical adviser concurred with Dr. Dawson's findings and concluded that appellant had no ratable hearing loss warranting a schedule award pursuant to the A.M.A., *Guides*. OWCP accepted appellant's claim for bilateral hearing loss but denied his entitlement to a schedule award based on the medical adviser's report.

The Board finds that OWCP properly found that appellant was not entitled to a schedule award. In a February 22, 2012 report, OWCP's medical adviser reviewed the February 1, 2012 audiogram obtained for Dr. Dawson. Appellant's hearing thresholds were 5, 5, 15 and 70 for the right ear and 10, 5, 10 and 55 for the left ear. These total 95 and 80 decibels, respectively, for averages of 23.75 and 20 decibels. Because these averages are below the 25 decibels fence, appellant is found to have no impairment in his ability to hear everyday sounds under everyday listening conditions.<sup>6</sup> This does not mean that he does not have a hearing loss, but rather that the extent of loss is not sufficient to constitute a ratable impairment according to the A.M.A., *Guides*. Appellant's occupational hearing loss did not cross the threshold established by the A.M.A., *Guides* for impairment.

On appeal, appellant disagreed with the finding that he does not have a ratable hearing loss. He may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if medical evidence establishes an increased loss due to the accepted employment exposure.<sup>7</sup> The current medical evidence of record does not establish that

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<sup>5</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>6</sup> *See G.M.*, Docket No. 11-1295 (issued January 25, 2012).

<sup>7</sup> *J.S.*, Docket No. 11-1634 (2012); *see Paul Fierstein*, 51 ECAB 381 (2000); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b)(2) (April 1995).

appellant's hearing loss to either ear is ratable for schedule award purposes. For this reason, the Board finds that OWCP properly denied a schedule award for his nonratable hearing loss.

Appellant may request a 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 has not established a ratable hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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