

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

N.P., Appellant

and

**TENNESSEE VALLEY AUTHORITY, FOSSIL
PLANT, New Johnsonville, TN, Employer**

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**Docket No. 11-1648
Issued: March 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2011 appellant filed a timely appeal from a March 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a schedule award. 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 the case.

ISSUE

The issue is whether appellant was entitled to a hearing aid for his accepted hearing loss.

FACTUAL HISTORY

On November 8, 2010 appellant, then a 62-year-old fossil mechanical technician, filed an occupational disease claim alleging that he sustained hearing loss as a result of daily exposure to loud noise generated by turbines, boiler feed water pumps, pulverizers and induced draught fans.

¹ 5 U.S.C. § 8101 *et seq.*

He became aware of his condition and realized its relationship to his employment on February 1, 1995.

OWCP received several audiometric records. A March 21, 1974 audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 55, 45, 40 and 35 for the right ear and -5, -5, -5 and -5 for the left ear. At the same frequency levels, a February 1, 1995 audiogram showed dBA losses of 80, 75, 70 and 80 for the right ear and 15, 10, 15 and 15 for the left ear while a June 22, 2010 audiogram noted losses of 65, 65, 70 and 55 for the right ear and 20, 15, 5 and 25 for the left ear.

A January 25, 2011 statement of accepted facts detailed that appellant worked for the employing establishment since 1974 as a laborer, deckhand, machinist apprentice and machinist. Appellant was routinely exposed to noise produced by jackhammers, steam leaks, motor boats, turbines, boiler feed water pumps, pulverizers, induced draught fans and air-pressurized impact wrenches, chipping guns, needle scalers and grinders. He wore hearing protection throughout his career.

OWCP referred appellant for a second opinion examination to Dr. Phillip B. Klapper, a Board-certified otolaryngologist. In a February 15, 2011 report, Dr. Klapper reviewed the case record and pointed out that appellant had normal hearing in his left ear and severe hearing loss in his right ear before he began his federal employment. Weber and Rinne tuning fork tests confirmed deficits on the right side. An audiogram obtained on February 15, 2011 exhibited the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 90, 75, 70 and 75 for the right ear and 30, 20, 15 and 35 for the left ear. Dr. Klapper diagnosed left-sided sensorineural hearing loss due to industrial noise exposure and right-sided conductive hearing loss due to otosclerosis. He recommended hearing amplification for the left ear.

OWCP's medical adviser reviewed Dr. Klapper's report on February 22, 2011 and agreed that appellant's left-sided hearing loss was the result of occupational noise exposure. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (hereinafter A.M.A., *Guides*) to the February 15, 2011 audiogram, he determined that appellant sustained a nonratable monaural impairment. The medical adviser noted that a hearing aid should not be authorized and identified February 15, 2011 as the date of maximum medical improvement.

On March 8, 2011 appellant's claim was accepted by OWCP for left monaural hearing impairment and denied for right monaural hearing impairment. OWCP further denied a schedule award on the grounds that the condition was not ratable and found that the weight of the medical evidence did not support authorization of a hearing aid.

LEGAL PRECEDENT

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the

² A.M.A., *Guides* (6th ed. 2008).

effects of an employment-related injury or condition.³ 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.⁴

ANALYSIS

Appellant contends on appeal only that he is entitled to a hearing aid for his accepted left ear hearing loss. He does not dispute OWCP's findings that he was not entitled to a schedule award for his nonratable left monaural hearing impairment and that he did not sustain a work-related right monaural hearing impairment.

The Board finds that OWCP properly denied appellant's request for a hearing aid. As noted, hearing aids and other medical benefits may still be payable if an employment-related hearing loss exists. OWCP is obligated to pay for medical treatment of a work-related injury but the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of such injury. Proof of causal relationship must include supporting rationalized medical evidence.⁵ In the present case, appellant did not meet his burden. In the February 15, 2011 report, Dr. Klapper recommended hearing amplification for the left ear. Nevertheless, this brief comment did not offer a clear, rationalized explanation of how hearing aids were medically necessary due to the accepted condition.⁶ Furthermore, OWCP's medical adviser specifically opined that a hearing aid was not warranted. In the absence of rationalized medical opinion evidence, appellant did not meet his burden of proof to demonstrate entitlement to hearing amplification.

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 did not sustain a ratable hearing impairment entitling him to a schedule award. The Board also finds that he was not entitled to hearing aids.

³ *Kennett O. Collins, Jr.*, 55 ECAB 649, 654 (2004).

⁴ *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).

⁵ *See Charlie A. Penney*, Docket No. 04-1432 (issued October 5, 2004).

⁶ *J.Y.*, Docket No. 11-971 (issued November 17, 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 1, 2012
Washington, DC

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

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

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