

FACTUAL HISTORY

The case has been previously before the Board. By decision dated September 10, 2012,² the Board set aside a February 23, 2012 decision of OWCP denying appellant's hearing loss claim. The Board remanded the case to OWCP to further develop the medical evidence to determine whether appellant had hearing loss causally related to factors of his federal employment. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.

At the time of the Board's September 10, 2012 decision, OWCP had not developed the issue of authorization of hearing aids as appellant's claim was denied on the grounds of causal relationship. Regarding the issue of hearing aids, Dr. H. Grady Arnold, a Board-certified otolaryngologist, acting as an OWCP second opinion physician, recommended in his September 28, 2011 report that hearing aids be authorized. He noted "bilateral hearing aids with approximately 90 percent amplification." On November 8, 2011 Tabitha Rossini, an audiologist, reported that during the auditory brainstem response testing appellant related poor intelligibility in adverse environments, while listening to some woman's voices, in the absence of visual cues, and while watching television. However appellant demonstrated no difficulties following conversation, in a quiet office setting with visual cues.

Subsequent to the Board's September 10, 2012 decision, OWCP referred appellant to Dr. Joseph A. Motto, a Board-certified physician in otolaryngology, for a second opinion evaluation. Mary Scafe, an audiologist, performed audiometric testing of appellant on October 31, 2012. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 20, 20 and 20 decibels; left ear 15, 10, 5 and 20 decibels. Dr. Motto reviewed the audiometric test results and concluded that appellant had sustained high frequency sensorineural bilateral hearing loss as a result of his federal employment. He rationalized his conclusion by stating that appellant's actual hearing loss exceeded age-expected loss at all frequencies, and that he believed the workplace noise exposure was sufficient to have caused his hearing loss. Dr. Motto did not offer an opinion regarding authorization of hearing aids.

OWCP forwarded appellant's case to a district medical adviser (DMA) for assessment of the percentage of permanent hearing loss. On November 2, 2012 an OWCP medical adviser reviewed Dr. Motto's report and the audiometric test dated October 31, 2012. The medical adviser concluded that appellant had a noise-induced sensorineural hearing loss which was not ratable in either ear. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a zero percent binaural sensorineural hearing loss, and that the date of maximum medical improvement was October 31, 2012. He noted that hearing aids were not authorized.

By decision dated November 6, 2012, OWCP accepted that appellant had a hearing loss which was causally related to factors of his federal employment; however, the hearing loss was not ratable for purposes of a schedule award. It also denied authorization for hearing aids.

² Docket No. 12-1003 (issued September 10, 2012).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing regulations⁴ 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.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 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, 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.⁶

ANALYSIS -- ISSUE 1

Following the Board's remand of this case on September 10, 2012, OWCP did accept that appellant's hearing loss was causally related to his federal employment. However, OWCP denied appellant's schedule award claim on the grounds that his hearing loss was not ratable.

An OWCP medical adviser applied OWCP's standardized procedures to the October 31, 2012 audiogram obtained by Dr. Motto. Test results for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 20, 20 and 20 decibels, respectively. These decibels were totaled at 75 and were divided by 4 to obtain an average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0, which was multiplied by the established factor of 1.5 to compute a zero percent monaural loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 5 and 20, respectively. These decibels were totaled at 50 and were divided by 4 to obtain the average hearing loss at those cycles of 12.5 decibels. The

³ 5 U.S.C. § 8107.

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

⁵ *Id.*

⁶ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

average of 12.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a zero percent hearing monaural loss for the left ear. As such, appellant's binaural loss is also zero percent. The Board finds that OWCP properly determined that appellant was not entitled to a schedule award for hearing loss.

Appellant may submit evidence of an increased loss, with a written request for reconsideration to OWCP at any time.

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, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.⁷ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.⁸ 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.⁹

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision as to whether hearing aids should be authorized. Dr. Arnold, an OWCP second opinion physician, recommended in his September 28, 2011 report that hearing aids be authorized. Appellant was subsequently evaluated by Dr. Motto, also an OWCP second opinion physician. Dr. Motto did not offer an opinion as to whether hearing aids should be authorized in his November 1, 2012 report. While the DMA concluded in his November 2, 2012 report that hearing aids were not authorized, he offered no explanation for his conclusion.¹⁰ OWCP found that hearing aids were not authorized, but provided no findings or explanation supporting its determination. The Board finds that OWCP should have requested that Dr. Motto clarify whether hearing aids should be authorized for appellant, after OWCP determined that appellant had established that his hearing loss was causally related to his federal employment.

Proceedings under FECA are not adversarial in nature, OWCP shares in the responsibility to develop the evidence and has an obligation to see that justice is done. As OWCP did not make findings or explain why it declined to authorize hearing aids, the Board finds that the case must

⁷ 5 U.S.C. § 8103 (a). *See Joshua A. Holmes*, 42 ECAB 231 (1990).

⁸ *Id.*

⁹ *See F.D.*, Docket No. 10-1175 (issued January 4, 2011); *R.R.*, Docket No. 12-1840 (issued February 14, 2013).

¹⁰ *See J.O.*, Docket No. 12-1482 (issued January 3, 2013).

be remanded for further development regarding this aspect of appellant's claim.¹¹ Following this and such other development as is deemed necessary, it shall issue an appropriate decision.

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing loss. The Board also finds that the case is not in posture for decision as to whether hearing aids should be authorized.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part for further development of the medical evidence.

Issued: July 3, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ *Id.*; see also *Lyle Dayberry*, 49 ECAB 369 (1998).