

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

B.F., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
San Antonio, TX, Employer**

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**Docket No. 13-824
Issued: July 17, 2013**

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 February 25, 2013 appellant filed a timely appeal from the November 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained greater than 21 percent bilateral hearing loss, for which he received a schedule award.

FACTUAL HISTORY

On October 31, 2011 appellant, then a 40-year-old dog handler, filed an occupational disease claim alleging a hearing loss as a result of exposure to loud noise in his federal employment. He first related his condition to his work on October 28, 2011. Appellant

¹ 5 U.S.C. § 8101 *et seq.*

explained that he was exposed daily to high-pitched barking and other noise from trains, planes and tractor trailers.

In support of his claim, appellant submitted an employing establishment report, dated October 24, 2011 from F. Rosenberg, an employing establishment medical officer, who noted that appellant had severe hearing loss and a repeat audiogram indicated a standard threshold shift. Mr. Rosenberg recommended that appellant obtain a complete hearing evaluation by a specialist. An October 24, 2011 audiogram prepared by Dr. Chi D. Nguyen, a Board-certified otolaryngologist, was submitted to the record.

OWCP advised appellant on November 14, 2011 of the deficiencies in his claim. It requested additional information regarding his employment history, exposure to hazardous noise at work, development of his hearing loss, as well as medical documents concerning his hearing loss.

Appellant submitted a November 6, 2011 statement, in which he reviewed his employment history. Regarding his current employment, he noted that from February 3, 1997 his duties as a customs and border protection officer and a narcotic dog handler exposed him to noise from high-pitched canine barking noises, tractor trailer air brakes, diesel engine noise, as well as jet engine noise.

On December 20, 2011 OWCP referred appellant for a second opinion examination by Dr. Gregory S. Rowin, Board-certified in otolaryngology.

In a January 26, 2012 report, Dr. Rowin stated that appellant had sustained a mild-to-moderately severe sensorineural hearing loss in both ears that was due to noise exposure in his employment. The audiogram for the right ear showed, at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hertz (Hz), hearing levels of 35, 40, 45 and 40 decibels and for the left ear, 30, 30, 45, and 30 decibels. The equipment was calibrated on October 13, 2011. Dr. Rowin also assigned five percent binaural hearing impairment for tinnitus.

OWCP forwarded the record to a medical adviser for review. On March 5, 2012 Dr. Michael M. Katz, an OWCP medical adviser, reviewed Dr. Rowin's report and the audiometric test dated January 26, 2012. He concluded that appellant had an employment-related noise-induced sensorineural hearing loss in both ears. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), Dr. Katz determined that appellant had a 21 percent binaural sensorineural hearing loss. The date of maximum medical improvement was January 26, 2012.

In a March 7, 2012 decision, OWCP accepted appellant's claim of bilateral noise-induced hearing loss.

By decision dated November 30, 2012, OWCP granted appellant a schedule award for 21 percent binaural hearing loss which covered 42 weeks from January 26 to November 14, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA² provides compensation to employees sustaining permanent loss or loss of use, of specified members 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 a determination is a matter which results 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*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of a disease or injury.⁹ The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living, 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.¹⁰

OWCP procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing

² 5 U.S.C. §§ 8101-8193.

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ See A.M.A., *Guides* 249.

¹⁰ *Id. R.H.*, Docket No. 10-2139 (issued July 13, 2011); see also *Robert E. Cullison*, 55 ECAB 570 (2004).

Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores.¹¹

ANALYSIS

To determine the nature and extent of appellant's hearing loss, OWCP referred appellant to Dr. Rowin, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Rowin diagnosed bilateral sensorineural hearing loss due to appellant's employment-related noise exposure. He attached a January 26, 2012 audiogram showing hearing levels of 35, 40, 45 and 40 decibels in the right ear and 30, 30, 45 and 35 decibels in the left ear at Hz levels of 500, 1,000, 2,000 and 3,000, respectively. Dr. Rowin also advised that appellant had tinnitus that interfered with activities of daily living. He calculated a 21.25 percent binaural hearing loss, based on 22.5 percent right ear and 15 percent left ear monaural hearing loss and 5 percent hearing loss for tinnitus. Dr. Rowin indicated a maximum medical improvement date of January 26, 2012.

OWCP referred the medical evidence to Dr. Katz, an OWCP medical adviser for a rating of permanent impairment in accordance with the A.M.A., *Guides*. In a March 5, 2012 report, Dr. Katz applied the findings of the January 26, 2012 audiogram to calculate 21 percent binaural hearing loss. In accordance with page 247 of the A.M.A., *Guides*, he averaged appellant's hearing levels of 35, 40, 45 and 40 decibels in the right ear and 30, 30, 45 and 35 decibels in the left ear at Hz levels of 500, 1,000, 2,000 and 3,000, respectively, to find average hearing levels of 35 on the left and 40 on the right. The medical adviser then subtracted a 25-decibel fence and multiplied the remaining balance, of 10 on the left and 15 on the right, by 1.5 to calculate 15 percent left ear monaural loss and 22.5 percent right ear monaural loss. Using page 250 of the A.M.A., *Guides*, he calculated binaural hearing loss by multiplying the lesser left ear monaural loss of 15 percent by 5, adding the greater 22.5 percent right ear loss and dividing this sum by 6. The medical adviser found a total binaural loss of 16 percent to which he added 5 percent for tinnitus as recommended by Dr. Rowin. This resulted in 21 percent binaural hearing impairment. The Board finds that the medical adviser properly applied the A.M.A., *Guides* in calculating that appellant sustained 21 percent binaural hearing loss.

As OWCP's medical adviser properly applied the A.M.A., *Guides* in calculating appellant's impairment rating, OWCP correctly relied on his opinion to find that appellant sustained 21 percent binaural hearing loss.¹² The Board finds that there is no evidence of greater impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained greater than 21 percent bilateral hearing loss, for which he received a schedule award.

¹¹ *Robert E. Cullison, supra* note 10; *J.H.*, Docket No. 08-2432 (issued June 15, 2009). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

¹² See *Linda Beale*, 57 ECAB 429 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2013
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