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T.W., Appellant)	
)	
and)	Docket No. 13-1967
)	Issued: February 10, 2014
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION, Houston, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On August 26, 2013 appellant filed a timely appeal from an August 14, 2013 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.

The issue is whether appellant sustained a ratable hearing loss warranting a schedule award.

On October 2, 2012 appellant, then a 54-year-old special agent, filed an occupational disease claim alleging that he sustained hearing loss causally related to factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. He attributed his condition to performing firearms training with inadequate hearing protection. Appellant did not stop work.

On January 8, 2013 OWCP referred appellant to Dr. Larry P. Conrad, a Board-certified otolaryngologist, for a second opinion examination. In a report dated January 22, 2013, Dr. Conrad diagnosed bilateral sensorineural hearing loss with tinnitus due to federal employment. He indicated that the hearing loss was below the 25-decibel threshold for finding impaired hearing but that the noise exposure was “severe enough to have caused tinnitus.” Dr. Conrad reviewed the results of an audiogram obtained on February 2, 2013. Audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed decibel losses in the right ear of 15, 15, 15 and 40 decibels, respectively; and decibel losses in the left ear of 15, 10, 20 and 50 decibels, respectively.² Dr. Conrad advised that the audiogram revealed no ratable monaural or bilateral hearing impairment but found that appellant had a five percent impairment as a result of tinnitus. He did not recommend hearing aids.

On February 19, 2013 an OWCP medical adviser reviewed the medical evidence and audiometric testing to determine if appellant’s binaural sensorineural hearing loss was ratable for schedule award purposes. Using Dr. Conrad’s findings, the medical adviser calculated that, under 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 hearing loss and a zero percent loss in both the left and right ears. He identified the date of maximum medical improvement as February 2, 2013. The medical adviser noted that Dr. Conrad provided a rating of five percent for tinnitus but found that the A.M.A., *Guides* did not provide for an impairment rating of tinnitus in the absence of a measurable hearing impairment.

On February 28, 2013 OWCP accepted appellant’s claim for bilateral sensorineural hearing loss. It informed him that the medical evidence currently showed that he did not require hearing aids.

On July 9, 2013 appellant filed a claim for a schedule award. By decision dated August 14, 2013, OWCP denied his claim for a schedule award after finding that his loss was not severe enough to be ratable.

On appeal appellant contends that OWCP did not discuss the early years of his career when he did not receive appropriate hearing protection. He notes that he worked in an airport without hearing protection. Appellant argues that he has a greater hearing loss than found by OWCP.

² The audiologist noted that the testing occurred at 5:30 a.m., and that the time of appellant’s last exposure to loud noise was at least 16 hours before the examination. The audiological equipment was last calibrated on January 25, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ 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* point 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 binaural hearing loss. 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 disease or injury.⁹ The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living (ADLs), 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 A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹¹

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 250.

⁸ *See J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁹ A.M.A., *Guides* 249.

¹⁰ *Id.*; *see also Robert E. Cullison*, 55 ECAB 570 (2004).

¹¹ *See Charles H. Potter*, 39 ECAB 645 (1988).

ANALYSIS

The Board finds that appellant has not established that he has a ratable hearing loss. OWCP accepted that he had bilateral sensorineural hearing loss based on the report of Dr. Conrad. On January 22, 2013 Dr. Conrad diagnosed bilateral sensorineural hearing loss with tinnitus causally related to his federal employment. He reviewed a February 2, 2013 audiogram and determined that the hearing loss was not severe enough to be ratable. Dr. Conrad found, however, that appellant had a five percent hearing loss due to tinnitus.

An OWCP medical adviser applied OWCP's standard review to the February 2, 2013 audiogram performed as part of Dr. Conrad's evaluation to arrive at a binaural impairment rating of zero percent. Test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz on the right revealed decibel losses of 15, 15, 15 and 40 decibels respectively, for a total of 85 decibels. This figure, when divided by 4, results in an average hearing loss of 21 decibels. The average of 21 decibels, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 15, 10, 20 and 50 decibels respectively, for a total loss of 95 decibels; 95 decibels divided by 4 results in an average of 24 decibels, which, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the left ear. As the monaural hearing loss rating was zero percent for both the left and right ears, the binaural hearing loss was also zero percent. OWCP's medical adviser also found that appellant was not entitled to a five percent impairment rating for tinnitus because he had no ratable hearing loss. A schedule award for tinnitus is not payable unless the medical evidence establishes that there is also a ratable hearing loss.¹² As appellant does not have a ratable hearing loss, he is not entitled to an impairment due to tinnitus.

On appeal appellant asserts that he did not receive proper hearing protection when he worked in an airport and during the early years of his career. OWCP, however, accepted that he sustained bilateral hearing loss. The issue is whether the hearing loss is enough to be ratable for schedule award purposes. As this is a medical determination, it may only be resolved by probative medical evidence.¹³

Additionally, appellant argues that he has a greater hearing loss than that found by OWCP. As discussed, however, the evidence currently establishes that his hearing loss does not support a schedule award. Appellant may request a schedule award or increased 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 that he sustained a ratable hearing loss warranting a schedule award.

¹² *Id.*

¹³ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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