

FACTUAL HISTORY

The Office accepted appellant's January 19, 1997 occupational disease claim for an employment-related binaural hearing loss.¹ However, it denied appellant's claim for a schedule award as the extent of the loss was not ratable. On October 1, 2004 appellant filed another occupational disease claim, attributing his hearing loss and tinnitus to his federal employment. The record reflects that he worked at the employing establishment with noise exposure from 1972 to 1995, when he was reassigned to a nonhazardous noise area. Appellant stopped working in February 1998. On July 11, 2005 he indicated that he had not been exposed to noise since he stopped work. On August 22, 2005 the Office prepared a statement of accepted facts, noting that appellant's hazardous noise exposure ceased in 1995.

On August 26, 2005 appellant was referred for examination to Dr. George Fisher, a Board-certified otolaryngologist. In a September 12, 2005 report, Dr. Fisher diagnosed a bilateral sensorineural high frequency hearing loss with tinnitus. He advised that appellant's hearing loss was caused by exposure to noise in his federal employment, stating that appellant had a lengthy exposure to high level noise and that there was no other etiology to explain the loss. He set forth findings on audiological testing, concluding that appellant had a 5.94 percent binaural hearing loss. On October 19, 2005 an Office medical adviser reviewed the medical evidence and found that appellant had a nine percent binaural hearing impairment caused by his employment.²

On January 4, 2006 appellant filed a claim for a schedule award. The Office prepared a statement of accepted facts and referred the record back to the Office medical adviser for review. In a February 28, 2006 report, the medical adviser modified his prior opinion noting that the statement of accepted facts listed February 1, 1998 as the date appellant ceased federal employment and his assignment to a nonhazardous noise area in 1995. He stated that any hearing loss after February 1, 1998 could not be from exposure to noise on the federal job. Therefore, the medical adviser concluded that appellant's hearing loss did not occur while in federal employment.

In a March 30, 2006 decision, the Office denied appellant's claim for a schedule award, finding that his ratable hearing loss after 1998 was not causally related to his federal employment.

Appellant requested a hearing on April 29, 2006, which the Office's Branch of Hearings and Review denied as untimely. Following an appeal to the Board, on July 24, 2007 the case was remanded to the Office for a hearing and merit decision.³ A telephone hearing was held on October 11, 2007 at which time appellant noted that in 1995 he was reassigned to a facilities

¹ The Office referred appellant for examination by Dr. Paul Loeffler, a Board-certified otolaryngologist. On March 25, 1997 Dr. Loeffler diagnosed a mild high frequency binaural sensorineural hearing loss with tinnitus which was causally related to appellant's occupational exposure to noise. On October 30, 1997 the Office accepted appellant's claim but noted that the extent of hearing loss was not ratable for schedule award purposes.

² In an October 27, 2005 decision, the Office again accepted appellant's claim for noise-induced hearing loss.

³ Docket No. 07-676 (issued July 24, 2007).

engineer position, which involved some exposure to noise from chemical explosions and heavy equipment.

In a December 31, 2007 decision, an Office hearing representative affirmed the denial of appellant's schedule award claim. She found that any hearing loss occurring after February 1, 1998 was not employment related.

LEGAL PRECEDENT

The Board has long recognized that if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment.⁴ The Board has also recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.⁵

In *Kenneth W. Morgan*,⁶ the Board noted that, in general, a noise-induced sensorineural hearing loss does not progress after exposure to hazardous occupational noise ceases. However, the Board did not enunciate this principle as a general rule but based the particular decision on the opinions of the medical specialists of record. In *Adelbert E. Buzzell*,⁷ the Board cautioned against an Office medical adviser providing a blanket unrationalized statement that hearing loss does not progress following the cessation of hazardous noise exposure.⁸

ANALYSIS

The Office has accepted that appellant sustained a binaural sensorineural hearing loss related to his history of hazardous noise exposure at the employing establishment. In 1997, it denied his claim for a schedule award on the basis that the extent of his hearing loss was nonratable. Appellant subsequently submitted a claim for an increased hearing loss and he was referred to Dr. Fisher for evaluation. Dr. Fisher advised that audiometric testing revealed a ratable binaural hearing loss. He reviewed appellant's employment history, noting that workplace noise exposure was long-standing and there was no other etiology for appellant's loss. This reflected a worsening of appellant's hearing loss since his 1997 evaluation by Dr. Loeffler.

On October 19, 2005 the Office medical adviser addressed the medical evidence, noting that the report of Dr. Fisher revealed a ratable hearing loss. In addressing causal relation, the medical adviser stated: "Noise exposure on the job is deemed sufficient to implicate it as a

⁴ See *Paul R. Reedy*, 45 ECAB 488 (1994).

⁵ See *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

⁶ 28 ECAB 569 (1977).

⁷ *Supra* note 5. See also *Armando Bello*, 34 ECAB 1739 (1983) (the Board does not take positions on medical questions of general application, but relies on the medical evidence in each case).

⁸ The Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(3) notes that if the progression of a noise-induced hearing loss is to be denied, the medical adviser must provide a well-rationalized opinion.

contributing factor to the claimant's hearing loss." However, the medical adviser subsequently amended his opinion on February 28, 2006 when he stated: "In my opinion, any hearing loss after February 1, 1998 could not be from exposure to noise on the federal job." Therefore, he concluded that appellant's hearing loss was not due to his federal employment. The Board finds that the medical adviser's opinion on causal relationship and the progression of appellant's hearing loss is not well rationalized. Rather, he provided a mere blanket statement finding that the progression of appellant's hearing loss was not employment related. The medical adviser did not address the report of Dr. Fisher, who provided an opinion supporting the causal relationship of appellant's hearing loss to his history of hazardous noise exposure in his federal employment. Moreover, the medical adviser did not provide any explanation as to why such exposure ceased to be a contributing factor, as he had originally noted in 2005.

The Board finds that the case is not in posture for decision. On remand, the Office should obtain a rationalized medical opinion on the issue of causal relationship and issue a *de novo* decision on appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that appellant's claim for a schedule award requires further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2007 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development consistent with this decision.

Issued: September 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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