

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

H.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 11-137
Issued: August 12, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 5, 2010 appellant filed a timely appeal from a September 24, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for an increased schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant is entitled to an increased schedule award for his employment-related hearing loss.

FACTUAL HISTORY

On January 22, 2004 appellant, then a 67-year-old mail handler, filed an occupational disease claim (Form CA-2) for hearing loss caused by noise exposure at work. He did not stop work.

¹ 5 U.S.C. § 8101 *et seq.*

On September 9, 2005 OWCP accepted appellant's claim for bilateral noise-induced hearing loss. By decision dated September 28, 2005, it granted him a schedule award for 14 percent bilateral noise-induced hearing loss. The period of the award ran for 28 weeks from August 15, 2005 to February 26, 2006. OWCP based its impairment determination on the August 15, 2005 second opinion examination by Dr. Peter Chikes, a Board-certified otolaryngologist, who found appellant had 14 percent employment-related binaural hearing impairment. On February 9, 2006 OWCP authorized hearing aids.

On September 15, 2010 appellant filed a claim for an increase of schedule award for hearing loss and submitted additional supporting evidence. The employing establishment reported that appellant retired on July 2, 2004.

In an August 19, 2010 report, Audiologist Stephanie G. Nance indicated a sloping mild to moderately-severe sensorineural hearing loss, bilaterally, worse in the left ear. She provided the results of audiometric evaluation and recommended replacement hearing aids.²

In an August 24, 2010 note, Dr. Chris E. Newman, a Board-certified otolaryngologist, cleared appellant for hearing amplification based on a July 17, 2009 evaluation.

On September 22, 2010 the district medical adviser reviewed the medical evidence of record and determined that the additional decrease in hearing loss was not ratable as appellant retired from federal employment on July 2, 2004 and, thus, the additional hearing loss was not causally related to the previous compensable employment factors. OWCP's medical adviser provided medical literature to support his rationale, indicating that there are no documented studies in the literature supporting progressive deafness due to noise and that following removal from noise exposure the pattern is partial or total impartial impairment.

By decision dated September 24, 2010, OWCP denied appellant's claim for an increased schedule award. It found that the weight of the medical evidence did not establish that the current hearing loss was employment related, noting that appellant had retired on July 2, 2004.

LEGAL PRECEDENT

The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he or she may apply for an additional schedule award for any increased permanent impairment.³ The Board also recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.⁴ In this latter instance, the request for an increased schedule award is not deemed as a new claim.⁵

² OWCP authorized new hearing aids on August 26, 2010.

³ See *J.R.*, 59 ECAB 710 (2008); *Paul R. Reedy*, 45 ECAB 488 (1994).

⁴ See *J.R.*, *supra* note 3; *Adelbert E. Buzzell*, 34 ECAB 96 (1982). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b) (March 2011).

⁵ See *Paul Fierstein*, 51 ECAB 391, 385 (2000).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

OWCP accepted that appellant sustained bilateral noise-induced hearing loss. In a decision dated September 28, 2005, it granted him a schedule award for 14 percent bilateral noise-induced hearing loss. OWCP based the schedule award on the August 15, 2005 impairment evaluation of Dr. Chikes, who provided a second opinion evaluation. The period of the award ran for 28 weeks from August 15, 2005 to February 26, 2006. On September 15, 2010 appellant filed a claim for an increased schedule award. He did not challenge the amount of the prior award but instead alleged that he had an increased hearing loss. In support of his request, appellant submitted an August 19, 2010 report from Audiologist Nance who indicated a sloping mild-to-moderately-severe sensorineural hearing loss, bilaterally, worse in the left ear. Appellant also submitted an August 24, 2010 medical report from Dr. Newman who cleared appellant for hearing amplification.

The Board finds that appellant has not established entitlement to a greater schedule award for her employment-related hearing loss. Audiologist Nance's August 19, 2010 report is of no probative value as she is not a physician under FECA.⁷ Dr. Newman's report is of no probative value as it does not provide a diagnosis nor address the issue of causal relationship.⁸ OWCP's medical adviser reviewed the evidence of record and concluded that appellant did not have an increased employment-related hearing loss. He explained that appellant had retired on July 2, 2004 and was thus removed from employment-related noise exposure; that the medical literature does not support progressive deafness; and that once an individual is removed from noise the hearing either partially or totally improves but does not further decline.

As appellant has not submitted any rationalized medical evidence to show new or continued noise exposure or the progression of an employment-related hearing loss, appellant has not established his claim for an increased schedule award.

⁶ See *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

⁸ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

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 is not entitled to an increased schedule award for his employment-related hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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