

that he sustained a loss of hearing in the performance of duty.² The Board found that the Office failed to sufficiently develop the factual evidence to determine the extent of his noise exposure during the course of his federal employment. The Board further noted that hearing loss could result from prolonged exposure to noise below 85 decibels and instructed the Office, following development of the factual evidence, to refer appellant for an otological and audiological evaluation. The facts and circumstances set forth in the prior decision are hereby incorporated by reference.

Following further development, the Office accepted appellant's claim for bilateral hearing loss with tinnitus. By decision dated December 17, 2009, it granted him a schedule award for a 20 percent bilateral hearing loss with tinnitus. The Office based its impairment determination on the June 15, 2009 second opinion examination by Dr. George H. Fisher, a Board-certified otolaryngologist, who found that appellant had a 20 percent binaural hearing impairment. The period of the award ran for 17.14 weeks from June 15, 2009 to March 21, 2010.

In a report dated January 13, 2010, Dr. Fisher noted that appellant continued "to work around high-intensity noise with a conveyor belt very close to where he is working." He provided the results of audiometric evaluation and diagnosed bilateral asymmetrical neurosensory hearing loss. Dr. Fisher indicated that appellant was "having a lot of difficulty socially now that the hearing in the right ear has dropped." He recommended bilateral hearing aids.

On April 23, 2010 appellant requested reconsideration of the Office's December 17, 2009 decision. Through his representative, he asserted that he had an additional impairment of the right ear and submitted Dr. Fisher's January 13, 2010 report in support of his allegation.

By decision dated May 10, 2010, the Office denied modification of its December 17, 2009 decision. It found that as he was claiming increased hearing loss due to new exposure in his federal employment, he needed to file a new claim.

On appeal, appellant noted that he had previously been awarded a schedule award for a 20 percent binaural hearing loss. He related that he went to see Dr. Fisher to be fitted with hearing aids and the physician advised him that he had an increased loss of hearing in the right ear "beyond what was originally diagnosed." Appellant related that he was not claiming new exposure and thus should not have to file another claim.

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

² Docket No. 08-1662 (issued December 18, 2008). On September 13, 2006 appellant, then a 61-year-old materials expeditor, filed an occupational disease claim alleging that he sustained a loss of hearing causally related to his work duties. He did not stop work.

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

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

According to Office procedures, when a schedule award is paid before exposure terminates, no additional award will be paid for periods of less than one year from the beginning date of the last award or the date of the last exposure, whichever comes first.⁶ In hearing loss claims, a claim based on an additional period of exposure constitutes a new claim.⁷ Thus, if a claimant requests review of a hearing loss schedule award, the Office must clarify whether the request is for review of the award or for additional compensation subsequent to the prior award. If the claimant is requesting additional compensation, the Office will inform the claimant that a new claim should be filed one year after the beginning of the last award or the date of last exposure, whichever occurs first.⁸

ANALYSIS

The Office accepted that appellant sustained bilateral hearing loss with tinnitus. In a decision dated December 17, 2009, it granted him a schedule award for a 20 percent impairment due to binaural hearing loss. The Office based the schedule award on the June 15, 2009 impairment evaluation of Dr. Fisher, who provided a second opinion evaluation. The period of the award ran from June 15, 2009 to March 21, 2010. On April 23, 2010 appellant requested reconsideration. He did not challenge the amount of the prior award but instead alleged that he had an increased hearing loss in his right ear. In support of his request, appellant submitted a January 13, 2010 report from Dr. Fisher who noted that appellant still worked near a conveyor belt that yielded “high-intensity noise.” Dr. Fisher provided the results of an audiometric evaluation.

The Office denied modifying its prior decision based on its determination that appellant needed to file a new claim based on his continued noise exposure. As noted, when a schedule award is paid before exposure terminates, no additional award will be paid for periods of less than one year from the beginning date of the last award or the date of the last exposure, whichever comes first.⁹ Dr. Fisher’s January 13, 2010 report, submitted by appellant in support of his reconsideration request, indicated that he continued to be exposed to high levels of noise in the course of his federal employment. As his exposure continued, he was not entitled to an additional award as it was less than one year from the beginning date of his last award,

⁴ See *J.R.*, *supra* note 3; *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b)(3) (March 1995).

⁷ *Id.*; see also *Stacey L. Walker*, 48 ECAB 353 (1997); *Henry Ross, Jr.*, 39 ECAB 373 (1988) and cases cited therein.

⁸ See *supra* note 6.

⁹ *Id.*

June 15, 2009. Further, Office procedures provide that in hearing loss claims, a claim for an award based on an additional period of exposure constitutes a new claim.¹⁰ The Office, therefore, properly instructed appellant to file a new claim.

On appeal appellant argues that he is not claiming an increased award based on new exposure. He argues that, when he saw Dr. Fisher to be fitted for hearing aids, the physician told him that he had increased hearing loss in his right ear. Appellant, however, is not alleging that the original award was in error but instead that he now has an additional hearing loss.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Id.*