

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

C.C., Appellant)

and)

**TENNESSEE VALLEY AUTHORITY, FOSSIL
OPERATIONS, ALLEN FOSSIL PLANT,
Chattanooga, TN, Employer**)

**Docket No. 11-731
Issued: October 11, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2011 appellant filed a timely appeal from a September 30, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied a schedule award for hearing loss. 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 merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had a ratable hearing loss, causally related to factors of his federal employment, entitling him to a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 28, 2010 appellant, then a 55-year-old shift operations supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained tinnitus in both ears due to his exposure to high noise levels in the performance of duty.

By letter dated July 9, 2010, OWCP advised appellant of the evidence needed to establish his claim and requested his employment history, date of last exposure to hazardous noise at work, all previous ear or hearing problems and related medical records and audiograms. It allotted 30 days for him to submit additional evidence.

Subsequently, appellant submitted evidence demonstrating that he was employed as a shift operations supervisor at the employing establishment from June 18, 1995 to his retirement on June 2, 2010 and that he was exposed to noise from various sources during that period. In addition, he submitted a series of audiometric results from testing through the hearing conservation program at the employing establishment for the period between 1995 and 2010.

In a February 28, 2007 medical report, Dr. William H. Light, a Board-certified internist, diagnosed tinnitus.

In an April 13, 2007 medical report, Dr. Neal S. Beckford, a Board-certified otolaryngologist, diagnosed persistent tinnitus, probably secondary to noise exposure. He indicated that appellant had a high-frequency sensorineural hearing loss at 4,000 hertz (Hz) that was symmetric and mild in severity.

In a November 6, 2008 medical report, Dr. Arthur Tyehimba, an otolaryngologist, diagnosed asymmetrical sensorineural hearing loss. He indicated that appellant's tinnitus matched out at 8,000 Hz suggesting a high-frequency source.

Appellant submitted a negative computed tomography (CT) scan of the temporal bone dated November 17, 2008.

In a November 21, 2008 medical report, Dr. Kendrick K. Henderson, a Board-certified internist and neurologist, diagnosed tinnitus and unspecified. He indicated that the CT scans of appellant's face and sinuses were essentially negative and recommended a magnetic resonance imaging (MRI) scan of his brain in order to rule out an enhancing acoustic tumor. A November 24, 2008 brain MRI scan was negative.

In a December 12, 2008 progress report, Dr. Henderson reiterated his diagnosis. He reported that appellant's workup was negative and indicated that the etiology was unknown.

In a December 19, 2008 medical report, Dr. Kerry L. Milligan, a Board-certified internist, diagnosed tinnitus.

In a May 8, 2009 medical report, Dr. Paul F. Shea, a Board-certified otolaryngologist, diagnosed tinnitus and discussed a possible Xylocaine perfusion procedure. He reported that appellant had normal hearing bilaterally.

On June 15, 2009 Dr. Shea diagnosed tinnitus in the left ear and performed a perfusion with intravenous Xylocaine/dexamethasone procedure.

In a September 1, 2009 postoperative report, Dr. Shea reported no subjective change in appellant's tinnitus as the procedure did not provide any significant relief.

OWCP referred appellant to Dr. Chester Allen Ruleman, Jr., a Board-certified otolaryngologist, for a second opinion examination with a statement of accepted facts. In a September 16, 2010 medical report, Dr. Ruleman diagnosed bilateral sensorineural hearing loss and tinnitus, causally related to his occupational exposure to noise. He indicated that cervical spine degenerative disease can increase tinnitus and opined that appellant's tinnitus was principally secondary to sensorineural hearing loss. Air-conduction hearing thresholds at 500, 1,000, 2,000 and 3,000 Hz were 15, 15, 30 and 40 decibels respectively on the right and 10, 15, 25 and 35 decibels respectively on the left. Dr. Ruleman reported that appellant had zero percent left ear, right ear and binaural hearing loss and did not recommend hearing aids.

On September 29, 2010 OWCP's district medical adviser reviewed Dr. Ruleman's report and the audiometric test of September 15, 2010. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had no ratable hearing loss and noted that his tinnitus did not warrant a schedule award in absence of a ratable hearing loss.

By decision dated September 30, 2010, OWCP accepted appellant's claim for a hearing loss and denied his schedule award claim finding that his hearing loss was not severe enough to be considered ratable. It further found that he would not benefit from hearing aids.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests 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* (6th ed. 2009), 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*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, 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* points out, losses below 25 decibels result in no impairment in

² 5 U.S.C. §§ 8101-8193.

³ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

the ability to hear everyday speech under everyday conditions.⁴ 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 the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵

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."⁶ 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."⁷

ANALYSIS

According to the audiometry obtained on September 15, 2010 for Dr. Ruleman, the Board-certified otolaryngologist and OWCP second opinion physician, appellant's hearing thresholds were 15, 15, 30 and 40 decibels on the right and 10, 15, 25 and 35 decibels on the left. These total 100 and 85 decibels, respectively, for averages of 25 and 21.25 decibels. Because these averages are equal to or below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.⁸ This does not mean he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* sets a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Thus, appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's nonratable hearing loss.

The Board further finds that OWCP properly denied a schedule award for tinnitus.⁹ FECA does not list tinnitus in the schedule of eligible members, organs or functions of the body therefore no claimant may receive a schedule award for tinnitus, at least not directly. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with ADLs up to five percent may be added to a measurable binaural hearing impairment.¹⁰ The Board has repeatedly held, however, that there is no basis for paying a

⁴ See A.M.A., *Guides* 250.

⁵ See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁶ See A.M.A., *Guides* 249.

⁷ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

⁸ See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

⁹ *Id.*

¹⁰ See A.M.A., *Guides* 249. See also *supra* note 7.

schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.¹¹ Although appellant submitted medical evidence that provided a firm diagnosis of tinnitus, as his hearing loss is not ratable, the Board will affirm OWCP's September 30, 2010 decision finding that he was not entitled to 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 does not have a ratable hearing loss and is therefore not entitled to a schedule award for tinnitus.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Richard Larry Enders*, 48 ECAB 184 (1996).