

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

C.C., Appellant)

and)

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Memphis, TN, Employer**)

**Docket No. 11-826
Issued: October 13, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from the January 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 in this case.

ISSUE

The issue is whether appellant has more than a four percent binaural hearing loss for which he received a schedule award.

FACTUAL HISTORY

On May 17, 2010 appellant, then a 58-year-old engineering equipment operator, filed a claim for occupational disease alleging that he sustained hearing loss due to his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. He first became aware of his hearing loss on August 26, 1986 and continued to be exposed to noise in his federal employment.

By letter dated May 21, 2010, OWCP advised appellant of the evidence necessary to establish his claim.

On June 8, 2010 appellant submitted employing establishment audiogram records that summarized his annual audiometric test results dating from 1976 to 2009. On June 21, 2010 he submitted records and a statement detailing the conditions of his federal employment. Appellant worked as a deckhand from April 1981 to July 1995, a winchman from July 1995 to August 2003, and as an engineering equipment operator commencing August 2003. He asserted that loud noise was present at all of his work locations.

On June 28, 2010 appellant's employer responded and affirmed appellant's noise exposure, but indicated that personal protective equipment (PPE) has been available in his work.

On August 30, 2010 OWCP referred appellant and a statement of accepted facts to Dr. Chester Allen Ruleman, Jr., a Board-certified otolaryngologist, for an audiometric examination and evaluation. On September 22, 2010 audiometric testing of appellant was conducted at Dr. Ruleman's request. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear, 25, 30, 30 and 25 decibels; left ear, 30, 25, 35 and 30 decibels. Dr. Ruleman determined that appellant sustained mild progressive bilateral sensorineural hearing loss due to noise exposure encountered in his federal employment. He stated that the workplace exposures as described were of sufficient intensity and duration to have caused the loss in question. Dr. Ruleman recommended that appellant wear noise protection at work.

On October 8, 2010 appellant filed a claim for a schedule award.

By decision dated October 12, 2010, OWCP accepted that appellant sustained bilateral sensorineural hearing loss due to workplace exposure to noise. It forwarded the case record to the district medical adviser (DMA) for assessment of the percentage of permanent hearing loss.

In an October 12, 2010 memorandum, the medical adviser requested that Dr. Ruleman review the record and address several issues: the discrepancy between the speech reception threshold (SRT) and the puretone audiometry (PTA) values; tympanogram values and whether the pattern of hearing loss was typical for noise trauma.

In an October 20, 2010 letter, Dr. Ruleman explained that the discrepancy between the SRT and the PTA score was not functional, and was mostly due to the redundancy of the speech signal used by the SRT score. He stated that the audiogram "does reveal a mild sensorineural hearing loss bilaterally," and that the tympanogram values were normal bilaterally.

On October 25, 2010 an OWCP medical adviser reviewed Dr. Ruleman's reports and the audiometric test of September 22, 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 a four percent binaural sensorineural hearing loss, with a date of

maximum medical improvement of September 22, 2010. OWCP's medical adviser noted that hearing aids were not authorized.

In a decision dated January 24, 2011, OWCP granted appellant a schedule award for a four percent binaural sensorineural hearing loss. The period of the award ran for eight weeks from September 22 to November 16, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

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* point out, losses below 25 dBA 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 the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵

The requirements of the evidence to be used in evaluating occupational hearing-loss claims are defined by the Federal (FECA) Procedure Manual, which provides that employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds, speech reception thresholds and monaural discrimination scores, and that the otolaryngologist's report include the date and hour of

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁵ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

examination, date and hour of the employee's last exposure to loud noise and a rationalized medical opinion regarding the relationship.⁶

ANALYSIS

Appellant's claim of occupational hearing loss was accepted by OWCP based on the report of Dr. Ruleman, a Board-certified otolaryngologist.

An OWCP medical adviser applied OWCP's standardized procedures to the September 22, 2010 audiogram performed for Dr. Ruleman. Test results for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 25, 30, 30 and 25 decibels, respectively. These decibels were totaled at 110 and were divided by 4 to obtain an average hearing loss at those cycles of 27.5 decibels. The average of 27.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 2.5 which was multiplied by the established factor of 1.5 to compute a 3.75 percent monaural loss of hearing for the right ear.⁷

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of ear 30, 25, 35 and 30, respectively. These decibels were totaled at 120 and were divided by 4 to obtain the average hearing loss at those cycles of 30 decibels. The average of 30 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 5, which was multiplied by the established factor of 1.5 to compute a 7.5 percent hearing monaural loss for the left ear.

OWCP's medical adviser proceeded to calculate binaural loss by taking the lesser loss, 3.75, multiplying it by 5 (18.75), then adding it to the greater loss of 7.5 (26.25). This amount was divided by six to arrive at the amount of the binaural hearing loss of four percent after rounding.

Under FECA, the maximum award for binaural hearing loss is 200 weeks of compensation.⁸ Appellant is entitled to four percent of 200 weeks or 8 weeks of compensation,⁹ the amount granted in this case. There is no medical evidence conforming to OWCP's standards that support a greater impairment.

⁶ *Joshua Holmes.*, 42 ECAB 231 (1991).

⁸ *E.S.*, 59 ECAB 249 (2007).

⁹ It is well established, however, that, if calculations based on the monaural hearing loss result in greater compensation, then the monaural hearing loss calculation should be used. The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks. The Board finds that the hearing loss in appellant's left ear should be rounded to eight percent, the nearest whole number. Eight percent of 52 weeks equals 4.2 weeks of compensation. The right ear loss of 4 percent equals 2.08 weeks of compensation. Since the binaural loss results in a greater number of weeks, OWCP properly based the award on binaural hearing loss.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than four percent binaural hearing loss.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ A claimant retains the right to file for a schedule award or increased schedule award, at any time, based on new exposure or on medical evidence indicating progression of an employment-related condition, resulting in permanent impairment or increased impairment.