



## **FACTUAL HISTORY**

Appellant, a 57-year-old retired welder and mechanical engineer, filed an occupational disease claim (Form CA-2) on April 7, 2010, alleging that he sustained a bilateral hearing loss caused by factors of his federal employment. While working at the employing establishment from 1972 until his retirement in May 2008, he was exposed to noise from chipping guns, carbon arc, peening tools, grinders, descenders, sawsall, hammers, machine presses, punches, ventilation fans and diesel engines. Appellant was provided hearing protection. He submitted results of audiograms dated 1972 to 2003, which showed varying degrees of bilateral hearing loss.

In an April 12, 2010 report, Dr. Gerald Randolph, a Board-certified otolaryngologist, evaluated appellant's hearing loss. An audiogram dated April 7, 2010, with an attached calibration certificate, showed hearing levels of 40, 30, 15 and 20 decibels on the right and 15, 15, 10 and 15 decibels on the left at 500, 1,000, 2,000 and 3,000 hertz (Hz), respectively. Based on the audiogram results, Dr. Randolph found that appellant had a ratable hearing loss of 1.875 percent in the right ear and 0 percent in the left ear pursuant to sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He diagnosed sensorineural hearing loss in the left ear and conductive hearing loss in the right ear. Dr. Randolph stated that the high-tone sensorineural hearing loss in appellant's left ear had an audiometric configuration compatible with hearing loss due to past noise exposure. The hearing loss in the right ear had a conductive component to the hearing loss in the right ear for the lower frequencies likely caused by a spark injury on the job several years ago. Dr. Randolph opined that there was no evidence of noise-induced hearing loss in appellant's right ear. He advised that the conductive component to this hearing loss likely protected appellant from noise-induced hearing loss in the right ear.

In a September 1, 2010 report, Dr. Randolph stated that the results of a November 20, 1972 audiogram showed a low frequency hearing loss in appellant's right ear, which he attributed to causes prior to his employment. The audiogram revealed a hearing loss of 1.875 percent in the right ear and 0 percent in the left ear. Dr. Randolph opined that, because there were no audiograms in the record at the time appellant left the employing establishment in May 2008, the most appropriate audiogram to utilize in rating noise-induced hearing impairment as a result of his federal employment would be the audiogram he performed on April 7, 2010, which showed a hearing loss of 1.875 percent in the right ear and 0 percent in the left ear.

Despite the fact that the audiogram did not show a ratable hearing loss in the left ear, there was evidence of noise-induced hearing loss in the left ear in the higher frequencies caused by industrial noise exposure. Dr. Randolph stated that appellant's workplace exposure was of sufficient intensity and duration to have caused or aggravated noise-induced hearing loss. He reiterated that there was a conductive component to the hearing loss in appellant's right ear which was not due to industrial noise exposure; he noted that the hearing loss in the lower frequencies of the right ear also existed at the time that he became employed at the employing establishment. Dr. Randolph concluded that the hearing loss in the right ear was not related to appellant's industrial noise exposure. He stated that appellant's hearing was normal in the speech frequencies through 3,000 cycles per second (cps). Dr. Randolph advised that appellant was not a candidate for hearing aids at the time of the April 7, 2010 evaluation.

By decision dated September 14, 2010, OWCP accepted appellant's claim for monaural sensorineural hearing loss in the left ear. It noted that he was not entitled to a schedule award because the medical evidence did not establish that his left-sided hearing loss was ratable. OWCP also found that appellant did not require the use of hearing aids.

In a September 15, 2010 report, an OWCP medical adviser reviewed the results of the April 7, 2010 audiogram. He determined that appellant had a 1.875 percent permanent, right-sided monaural sensorineural hearing loss, unrelated to his federal employment and a nonratable work-related hearing loss in the left ear. The medical adviser noted that appellant would not benefit from hearing amplification.

By decision dated November 16, 2010, OWCP denied appellant's claim for a schedule award. It found that the hearing loss in his right ear was not related to his federal employment.<sup>2</sup> OWCP also found that appellant did not require hearing aids.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>7</sup> Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> 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

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<sup>2</sup> OWCP instructed appellant to disregard an October 28, 2010 letter which informed him that referencing the right ear.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards, Special Determinations*, Chapter 2.0700.4(b) (January 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a left-sided hearing loss due to noise exposure from his federal employment.<sup>11</sup> The issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides*, warranting a schedule award. Dr. Randolph provided an April 7, 2010 audiogram, with a recent calibration certificate, showing hearing levels of 10, 10, 15 and 10 decibels on the left at 500, 1,000, 2,000 and 3,000 Hz, respectively, or an average of 13.75 on the left. The average of 13.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels. Based on this test Dr. Randolph determined that appellant did not sustain a ratable monaural hearing loss on the left.<sup>12</sup> The Board finds that he properly applied the A.M.A., *Guides* to the April 7, 2010 audiogram. Appellant did not sustain a ratable hearing loss for schedule award purposes.<sup>13</sup> The September 14, 2010 decision will be affirmed.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking compensation under FECA<sup>14</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>15</sup> including that he is an employee within the meaning of FECA and that he filed his claim within the applicable time limitation.<sup>16</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>17</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or

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<sup>9</sup> *Id.*

<sup>10</sup> See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>12</sup> A.M.A., *Guides* 249-51.

<sup>13</sup> See *S.G.*, 58 ECAB 383 (2007).

<sup>14</sup> 5 U.S.C. §§ 8101-8193.

<sup>15</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>16</sup> See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

<sup>17</sup> *R.C.*, 59 ECAB 546 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>18</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>19</sup>

### ANALYSIS -- ISSUE 2

It is not disputed that appellant sustained a hearing loss in his right ear. The issue is whether his hearing loss was caused or aggravated by exposure to noise while working for the employing establishment. The record reflects that appellant was exposed to noise from 1972 to May 2008 in the course of his federal employment as a welder and mechanical engineer. Dr. Randolph noted that a preemployment audiogram dated November 25, 1972 revealed a right ear hearing loss of 1.875 percent, the same percentage of hearing loss calculated in the April 7, 2010 audiogram. The 2010 audiogram showed levels of 40, 30, 15 and 20 decibels in the right ear at 500, 1,000, 2,000 and 3,000 Hz, respectively, which amounted to 105, which, when divided by 4, obtains an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 1.25 decibels, which when multiplied by the established factor of 1.5 computes a 1.875 percent hearing loss in the right ear. Dr. Randolph stated that there was a conductive component to the low frequency hearing loss in appellant's right ear which preexisted his federal employment and was not due to industrial noise exposure. The right in loss was probably due to a preemployment spark injury, which shielded him from any noise-induced hearing loss in the right ear. Dr. Randolph therefore found that the hearing loss in appellant's right ear was not related to his industrial exposure. An OWCP medical adviser, reviewed Dr. Randolph's opinion and agreed that appellant's monaural hearing loss in his right ear was not work related.

Although appellant submitted results from audiometric testing performed from August 1972 to April 2002, these audiograms are insufficient to establish causal relation. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated the right ear hearing loss. Dr. Randolph provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. The Board finds that his report represents the weight of the evidence.

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<sup>18</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>19</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

On appeal, appellant contends that he sustained a hearing loss beyond that found by the single audiometric test performed for Dr. Randolph and that he should be referred for another hearing test. The Board finds that OWCP properly used the audiometric test performed on April 7, 2010 for determining appellant's impairment and eligibility for a schedule award. It was the only test of record performed within the past two years that was certified by a physician.<sup>20</sup> As noted it is appellant's burden to submit a properly certified audiogram for review if he objects to the audiogram selected by OWCP for determining the degree of hearing loss.<sup>21</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduces the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>22</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.<sup>23</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant is not entitled to hearing aids. There is no medical evidence from a physician recommending that he be provided with hearing aids or any other medical treatment for his employment-related hearing loss. Both Dr. Randolph and an OWCP medical adviser found that appellant did not require hearing aids. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.<sup>24</sup>

### **CONCLUSION**

The Board finds that appellant has not established a ratable hearing loss in his left ear. The Board finds that he did not meet his burden of proof to establish hearing loss in his right ear causally related to his federal employment. The Board also finds that OWCP did not abuse its discretion in denying authorization for hearing aids.<sup>25</sup>

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<sup>20</sup> See *H.S.*, 58 ECAB 690 (2007); *John C. Messick*, 25 ECAB 333 (1974).

<sup>21</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236.

<sup>22</sup> 5 U.S.C. § 8103.

<sup>23</sup> OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988).

<sup>24</sup> This does not preclude appellant from seeking authorization for hearing aids or other appropriate medical treatment. See Federal (FECA) Procedure Manual, *supra* note 6, Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990); *Raymond VanNett*, 44 ECAB 480 (1993).

<sup>25</sup> The Board notes that appellant submitted additional evidence to the record following OWCP's final decisions. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16 and September 14, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 27, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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