

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

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**J.B., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, GA, Employer**

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**Docket No. 12-607  
Issued: August 9, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 26, 2012 appellant filed a timely appeal of the November 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his schedule award claim.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has a ratable hearing loss entitling him to a schedule award.

On appeal, appellant contends that he is entitled to a schedule award for his employment-related hearing loss.

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<sup>1</sup> On his appeal request form, appellant noted the date of the decision as January 6, 2012. The Board notes, however, that OWCP's decision was dated and issued on November 7, 2011.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 13, 2011 appellant, then a 52-year-old aircraft mechanic, filed an occupational disease claim alleging that on June 30, 2009 he first realized that his hearing loss was caused by working in fuel tanks with rivet guns, with drill motors and around jet engines, air conditioning units and heaters.

Appellant and the employing establishment submitted information concerning appellant's employment history and noise exposure and audiograms conducted between June 9, 1994 and August 9, 2010 were also submitted.

On June 8, 2011 Dr. Augustus E. Anderson, Jr., an OWCP medical adviser, reviewed appellant's medical record and stated that the initial audiogram dated June 9, 1994 showed normal bilateral hearing. The last audiogram performed on August 9, 2010 showed that appellant's hearing was still normal on the left, but showed findings consistent with mild high frequency hearing loss at 4,000 and 6,000 hertz (Hz) on the right.

By letter dated June 14, 2011, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Glen L. Watkins, a Board-certified otolaryngologist, for a second opinion as to whether he sustained hearing loss causally related to his federal employment.

In a July 28, 2011 medical report, Dr. Watkins reported findings on examination and diagnosed appellant with bilateral sensorineural hearing loss and tinnitus. An audiogram conducted on July 18, 2011 reflected testing at 500, 1,000, 2,000 and 3,000 Hz and showed the following decibel losses: 20, 20, 25 and 25 in the right ear and 15, 15, 15 and 20 in the left ear. Dr. Watkins opined that the diagnosed conditions were causally related to appellant's history of noise exposure in his federal employment. He recommended an annual hearing evaluation, ear protection and a hearing aid evaluation for the right ear.

On August 3, 2011 Dr. Anderson reviewed Dr. Watkins' findings and determined that appellant had no ratable hearing loss under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He stated that appellant reached maximum medical improvement on July 18, 2011 the date of the examination by Dr. Watkins.

By letter dated August 8, 2011, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On October 14, 2011 appellant filed a claim for a schedule award.

In a November 7, 2011 decision, OWCP denied appellant's claim, finding that the medical evidence of record established that his hearing loss was not ratable under the sixth edition of the A.M.A., *Guides*.

## LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>5</sup>

Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.<sup>6</sup> 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 the ability to hear everyday speech under everyday conditions.<sup>7</sup> 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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup>

The A.M.A., *Guides* provides that, if tinnitus interferes with activities of daily living, such as sleeping, reading and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.<sup>10</sup> However, subjective information regarding the impact of tinnitus on daily life should not be the sole criteria for determining impairment. Objective data must be integrated with the subjective data to estimate the degree of impairment.<sup>11</sup>

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<sup>3</sup> FECA provides that, for complete or 100 percent loss of hearing in one ear, an employee shall receive 52 weeks' compensation. For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. 5 U.S.C. § 8107(c)(13).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>6</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

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

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

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

<sup>10</sup> A.M.A., *Guides* 249. *See also R.D.*, 59 ECAB 127, 131 (2007).

<sup>11</sup> *Robert E. Cullison*, 55 ECAB 570 (2004).

## ANALYSIS

The Board finds that the evidence of record does not establish that appellant sustained a ratable hearing loss.

Dr. Anderson, an OWCP medical adviser, properly applied OWCP's standardized procedures to the July 18, 2011 audiogram obtained by Dr. Watkins, who diagnosed bilateral sensorineural hearing loss and tinnitus. The July 18, 2011 audiogram certified by Dr. Watkins does not establish a ratable hearing loss. According to OWCP's standardized procedures testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed hearing losses in the right ear of 20, 20, 25 and 25. These were added to the total 90 decibels which, when divided by 4, produced an average hearing loss of 22.5 decibels. The average of 22.5 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 and which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in appellant's right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz, revealed hearing losses of 15, 15, 15 and 20. These totaled 65 decibels which when divided by 4, produced an average hearing loss of 16.25 decibels. The average hearing loss of 16.25 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals 0 which, when multiplied by the established factor of 1.5 produced a 0 percent hearing loss in appellant's left ear.

Although appellant submitted historical audiograms from the employing establishment's hearing conservation program, they are insufficient to establish a ratable hearing loss and do not fully comply with the requirements set forth by OWCP. They lack speech testing and bone conduction scores and were not prepared or certified as accurate by any physician as defined under FECA.<sup>12</sup> It is appellant's burden to submit a properly prepared and certified audiogram to OWCP.<sup>13</sup> OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence. The Board finds, therefore, that the evidence of record establishes that appellant's hearing loss is not ratable, and as such he is not entitled to the award for tinnitus.

On appeal, appellant contended that he is entitled to a schedule award because he sustained employment-related hearing loss. While OWCP accepted that appellant sustained bilateral sensorineural hearing loss due to noise exposure from his federal employment, the issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides*. OWCP's medical adviser properly computed the percentage of appellant's hearing loss based on the formula contained in the A.M.A., *Guides*. There is no provision for granting a schedule award in the absence of a ratable hearing loss after deducting the 25 decibel fence.

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<sup>12</sup> *Id.*; *Joshua A. Holmes*, 42 ECAB 231 (1990).

<sup>13</sup> *Id.*

Appellant may request a schedule award or increased schedule award at any time 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 has not established a ratable hearing loss entitling him to a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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