

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

C.B., Appellant)

and)

**DEPARTMENT OF LABOR, MINE SAFETY &
HEALTH ADMINISTRATION,
Madisonville, KY, Employer**)

**Docket No. 11-1515
Issued: February 21, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 14, 2011 appellant filed a timely appeal from a May 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained a ratable hearing impairment entitling him to a schedule award; and (2) whether he was entitled to hearing aids.

FACTUAL HISTORY

On January 27, 2011 appellant, then a retired 65-year-old supervisory mine safety and health specialist, filed an occupational disease claim alleging that he sustained hearing loss as a

¹ 5 U.S.C. § 8101 *et seq.*

result of prolonged exposure to loud machinery. He was last exposed on October 19, 2010 and retired effective December 31, 2010.

OWCP received several audiometric records from the employing establishment. A February 12, 1976 audiogram revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 5, 0, 0 and 0 for the right ear and 5, 0, 0 and 5 for the left ear. At the same frequency levels, an October 20, 2010 audiogram showed dBA losses of 5, 0, 15 and 35 for the right ear and 5, 10, 20 and 40 for the left ear.

A March 3, 2011 statement of accepted facts detailed that appellant worked for the employing establishment from September 13, 1970 until December 31, 2010 as a mine inspector, supervisor and manager. During his career, he was routinely exposed to noise generated by underground mining equipment, including long wall and continuous miners, drills, roof bolters, centrifugal fans, coal crushers, rotary breakers, augers, ram cars, loaders, excavators, bull dozers, scrapers and scoops.

OWCP referred appellant for a second opinion examination to Dr. Linda A. Mumford, a Board-certified otolaryngologist. In an April 20, 2011 report, Dr. Mumford reviewed the case file and noted that the February 12, 1976 audiogram exhibited normal hearing. On examination, she did not observe any physical abnormalities. An audiogram obtained on April 20, 2011 showed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 10, 10, 20 and 30 for the right ear and 15, 15, 30 and 40 for the left ear.² Speech reception threshold scores were 20 dBA for the right ear and 25 dBA for the left ear. Dr. Mumford diagnosed moderate-to-severe bilateral sensorineural hearing loss due to occupational noise exposure, citing appellant's extensive job history. She recommended a hearing aid trial.

On April 26, 2011 OWCP's medical adviser reviewed Dr. Mumford's report and agreed that appellant's binaural hearing loss resulted from occupational noise exposure. Applying the standard provided by the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ to the April 20, 2011 audiogram, he calculated a nonratable loss. The medical adviser determined that hearing amplification was not warranted because appellant's speech reception threshold scores were excellent. He identified April 20, 2011 as the date of maximum medical improvement.

By decision dated May 6, 2011, OWCP accepted appellant's claim for bilateral noise-induced hearing loss and denied entitlement to a schedule award on the grounds that the accepted condition was not ratable. It also found that hearing aids were not warranted.

² The audiogram also revealed the following dBA losses at 4,000, 6,000 and 8,000 Hz: 40, 60 and 85 for the right ear and 50, 70 and 95 for the left ear.

³ A.M.A., *Guides* (6th ed. 2008).

LEGAL PRECEDENT -- ISSUES 1 & 2

FECA's schedule award provision and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁵ 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.⁶

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 Hz, the losses at each frequency are added up and averaged. Then, the "fence" of 25 dBA is deducted because, as the A.M.A., *Guides* points 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. Binaural loss is determined by first 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.⁷

Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.⁸

ANALYSIS -- ISSUES 1 & 2

Appellant filed a claim for binaural hearing loss and was referred to Dr. Mumford for a second opinion examination. After reviewing the statement of accepted facts and prior audiometric records, conducting a thorough physical evaluation and obtaining an audiogram on April 20, 2011, Dr. Mumford diagnosed bilateral sensorineural hearing loss due to industrial noise exposure. OWCP's medical adviser concurred with this assessment, but found that appellant did not sustain a ratable condition for purposes of a schedule award. By decisions

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(13).

⁶ *Supra* note 4. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁷ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁸ See *F.D.*, Docket No. 10-1175 (issued January 4, 2011); FECA Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2).

dated May 6, 2011, OWCP accepted the occupational disease claim for bilateral hearing loss, but denied a schedule award and hearing aids.

The Board finds that OWCP properly denied appellant's schedule award claim. On April 26, 2011 OWCP's medical adviser applied the A.M.A., *Guides* standard for rating hearing impairment to the April 20, 2011 audiogram. Appellant's right ear recorded losses of 10, 10, 20 and 30 dBA at 500; 1,000; 2,000 and 3,000 Hz. The total loss was 70 dBA. When divided by four, the result was an average hearing loss of 17.5 dBA. The average hearing of 17.5 dBA was reduced by the fence of 25 dBA to zero dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the right ear. At the same frequency levels, appellant's left ear recorded losses of 15, 15, 30 and 40 dBA. The total loss was 100 dBA. When divided by four, the result was an average hearing loss of 25 dBA. The average hearing of 25 dBA was reduced by the fence of 25 dBA to equal zero dBA. This figure was then multiplied by the established factor of 1.5, yielding zero percent monaural impairment of the left ear. Since OWCP's medical adviser properly determined that the condition was not ratable, appellant was not entitled to a schedule award.

The Board also finds that OWCP properly denied appellant's request for hearing aids. As noted, hearing aids and other medical benefits may still be payable if an employment-related hearing loss exists. While OWCP is obligated to pay for medical treatment of a work-related injury, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of such injury. Proof of causal relationship must include supporting rationalized medical evidence.⁹ In the present case, appellant did not meet this burden. The only evidence of record supporting hearing amplification was Dr. Mumford's recommendation for a trial in her April 20, 2011 report. This brief remark did not offer a clear, rationalized explanation demonstrating that hearing aids were medically necessary due to the accepted condition.¹⁰ On the other hand, OWCP's medical adviser specifically opined in his April 26, 2011 report that amplification was unwarranted in view of appellant's speech reception threshold scores. Thus, the weight of the medical evidence does not support authorization of hearing aids.

Appellant contends on appeal that he was informed by an audiologist during the April 20, 2011 second opinion examination that he required hearing aids. An audiologist, however, is not a physician under FECA and cannot provide a qualified medical opinion on the matter.¹¹

Appellant may request a 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.

⁹ See *Charlie A. Penney*, Docket No. 04-1432 (issued October 5, 2004).

¹⁰ See *id.*

¹¹ *T.B.*, Docket No. 09-1504 (issued April 12, 2010). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

The Board finds that appellant did not sustain a ratable hearing impairment entitling him to a schedule award. The Board also finds that he was not entitled to hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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