

FACTUAL HISTORY

On March 30, 2011 appellant, then a 59-year-old electrician supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained a binaural hearing loss due to employment-related noise exposure. He submitted personnel records and results of audiograms dated 1977 to 2011, which showed varying degrees of binaural hearing loss.

In a March 23, 2011 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, forwarded an audiogram performed by Amy Becken, a certified audiologist. It revealed a bilateral high frequency sensorineural hearing loss, with speech reception thresholds of 15 decibels in the right ear and 5 decibels in the left ear. Discrimination scores were measured at 96 percent in the right ear and 100 percent in the left ear. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following decibel losses: 15, 15, 10 and 20 for the right ear and 5, 0, 10 and 25 for the left ear respectively. Dr. Randolph opined that appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question. He diagnosed noise-induced sensorineural hearing loss and opined that this condition was due to noise exposure at appellant's federal employment. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Randolph concluded that appellant had a zero percent binaural hearing loss. He stated that appellant was a borderline candidate for hearing aid evaluation and fitting.

In a letter dated September 8, 2011, OWCP requested additional information from Dr. Randolph, including a certificate of calibration regarding the March 23, 2011 audiogram, a diagnosis, examination findings and comments on the development of appellant's hearing loss in light of his review of his medical record.

In an October 20, 2011 supplemental report, Dr. Randolph provided examination findings, reiterated his diagnosis of noise-induced sensorineural hearing loss and opined that this condition was due to noise exposure at appellant's federal employment. Based upon the results of the March 23, 2011 audiogram, he concluded that appellant did not previously have a ratable hearing loss. Dr. Randolph stated that appellant's hearing loss, for the most part, affected the higher frequencies and that his hearing through the speech frequencies was nearly normal. He opined that at most, appellant was a borderline candidate for hearing aid evaluation and fitting. Dr. Randolph provided a certificate reflecting that the audiometer was calibrated on November 11, 2010.

On November 2, 2011 OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

The case record was forwarded to OWCP's medical adviser for review and an opinion as to whether appellant had a ratable hearing loss. In a November 15, 2011 report, the medical adviser reviewed Dr. Randolph's reports and the otologic and audiologic testing performed. 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 5, 0, 10 and 25 respectively. These decibel losses were totaled at 40 decibels and were divided by 4 to obtain the average hearing loss of 10 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal

a negative figure. Testing for the right ear revealed decibel losses of 15, 15, 10 and 20 respectively. These decibel losses were totaled at 60 decibels and were divided by 4 to obtain the average hearing loss of 15 decibels. This average loss was then reduced by 25 decibels, resulting in a negative figure. The medical adviser concluded that the calculations showed that appellant had a zero percent binaural sensorineural hearing loss under the sixth edition of the A.M.A., *Guides*. The medical adviser recommended that hearing aids not be authorized.

By decision dated November 28, 2011, OWCP found that appellant did not have a ratable hearing loss that would entitle him to a schedule award. It also found that the weight of the medical evidence established that he would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

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. FECA does not, however, 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*.⁵ 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.⁶ 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.⁷ 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.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

² *Id.* at § 8107.

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

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS -- ISSUE 1

The evidence of record is insufficient to establish that appellant is entitled to a schedule award for his hearing loss in accordance with the sixth edition of the A.M.A., *Guides*.

On November 15, 2011 OWCP's medical adviser reviewed the otologic and audiologic testing performed on appellant and properly applied OWCP's standardized procedures to this evaluation. 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 5, 0, 10 and 25 respectively. These decibel losses were totaled at 40 decibels and were divided by 4 to obtain the average hearing loss of 10 decibels. Reducing this average loss by 25 decibels resulted in a negative figure. Testing for the right ear revealed a total loss of 60 decibels (15, 15, 10 and 20, respectively), which when divided by 4, produced an average hearing loss of 15 decibels. Reducing this average loss by 25 decibels again resulted in a negative figure. Based upon these calculations, the medical adviser properly concluded that appellant had a zero percent binaural sensorineural hearing loss and, therefore, did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*.

LEGAL PRECEDENT -- ISSUE 2

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, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁰ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.

As noted, hearing aids and other medical benefits may still be payable if an employment-related hearing loss exists. OWCP will furnish appliances and supplies prescribed or recommended by a qualified physician if they are deemed likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹² In this case, however, appellant's physician did not prescribe or recommend that appellant receive hearing aids.

In his March 23 and October 11, 2011 reports, Dr. Randolph stated that appellant's hearing loss, for the most part, affected the higher frequencies and that his hearing through the speech frequencies was nearly normal. He opined that at most, appellant was a borderline

¹⁰ 5 U.S.C. § 8103(a).

¹¹ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

¹² *Supra* note 10.

candidate for hearing aid evaluation and fitting. These reports did not offer a clear, rationalized explanation of how hearing aids were medically necessary due to the accepted condition.¹³ Rather, Dr. Randolph's opinion was speculative as to whether appellant's near-normal hearing through speech frequencies would be improved by the use of a hearing aid. Therefore, OWCP's denial of appellant's request was reasonable under the circumstances. The Board finds that OWCP did not abuse its broad discretion in denying authorization for hearing aids.¹⁴

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award. The Board further finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ *J.Y.*, Docket No. 11-971 (issued November 17, 2011).

¹⁴ Appellant is not precluded from seeking authorization for hearing aids or other appropriate medical treatment in the future. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990); *Raymond VanNett*, 44 ECAB 480 (1993).