

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

D.G., Appellant)	
)	
and)	Docket No. 12-545
)	Issued: July 13, 2012
DEPARTMENT OF THE AIR FORCE, ROBINS)	
AIR FORCE BASE, Warner Robbins, GA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 20, 2012 appellant filed a timely appeal of the January 3, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied appellant's claim for an occupational disease. 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.

ISSUE

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

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 21, 2011 appellant, then a 53-year-old aircraft mechanic, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. He became aware of his hearing loss on September 20, 2011. Appellant did not stop work.

Appellant submitted an undated statement noting his work history. He reported working as an aircraft mechanic from 1990 and was exposed to noise from jet turbine engines, diesel air conditioners and generators, air compressors, drills, air hammers, saws, rivet guns and grinders. Appellant indicated that he was still exposed to hazardous noise at work. He submitted employing establishment medical records from September 20, 2011 where he was treated for hearing loss. Appellant was diagnosed with sensorineural hearing loss, tinnitus, hypertension, tympanic membrane perforation of the right ear and post-traumatic tympanic membrane perforation.

The employing establishment submitted an undated statement from James Mulroy, resources supervisor, who noted that appellant was exposed to noise from rivet guns, impact guns, compressors, grinders, air conditioning units, hydraulic testing, pneumatic vacuum cleaners, pneumatic drills, air ratchet and pull guns. Mr. Mulroy noted that appellant was exposed to the noise eight hours per day and was provided with earplugs and ear defenders. In a November 2, 2010 noise survey, it was noted that the maximum daily equivalent continuous noise level was 100 decibel average which was above the 85 hazardous noise criteria of the Air Force Occupational Safety and Health Standard.

A November 28, 2011 statement of accepted facts noted appellant's work history with the employing establishment since 1990, that he was exposed to noise for eight hours per day five days per week and that he used earplugs and ear defenders.

On November 30, 2011 OWCP referred appellant to Dr. Kenneth Walker, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a December 22, 2011 report, Dr. Walker noted examining appellant and noted that appellant's exposure to noise was generated from machinery related to employment as an aircraft mechanic and flight line mechanic. He noted performing an otologic evaluation of appellant and audiometric testing that day on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 15, 20, 25 and 30 decibels; left ear 15, 20, 25 and 30 decibels. Appellant reported a hearing conservation program in place since 1990. He reported that he had tinnitus. Dr. Walker diagnosed cerumen, tinnitus and noise-induced hearing loss. He noted tympanogram tracings were normal bilaterally, the ear canals were normal following cerumen removal with intact tympanic membranes and clear middle ears. Dr. Walker noted that the audiogram revealed bilateral noise-induced sensorineural hearing loss which was consistent in pattern with noise-induced hearing loss due in part to noise exposure during federal employment. He recommended hearing conservation measures, annual audiograms and a hearing aid evaluation.

On December 29, 2011 an OWCP medical adviser reviewed Dr. Walker's report and the audiometric test of December 22, 2011. He concluded that, in accordance with the sixth edition

of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying OWCP's current standards for evaluating hearing loss to the results of the December 22, 2011 audiogram. He noted that appellant reached maximum medical improvement on December 22, 2011. The medical adviser recommended that hearing aids not be authorized.

In a decision dated January 3, 2012, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable for purposes of a schedule award under FECA. It informed him that hearing aids were not authorized.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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

² A.M.A., *Guides* (6th ed. 2008).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ A.M.A., *Guides* 250 (6th ed. 2008).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

six to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral 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*, entitling him to a schedule award.

OWCP properly referred appellant to Dr. Walker regarding his hearing loss. An OWCP medical adviser reviewed Dr. Walker's findings and concluded that appellant's hearing loss was aggravated by his employment. The medical adviser applied OWCP's standardized procedures to the December 22, 2011 audiogram performed for Dr. Walker to determine if appellant's hearing loss was ratable for schedule award purposes. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 20, 25 and 30, respectively. These decibels were totaled at 90 and were divided by 4 to obtain an average hearing loss at those cycles of 22.50 decibels. The average of 22.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 15, 20, 25 and 30, respectively. These decibels were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear.

The Board finds that OWCP's medical adviser applied the proper standards to Dr. Walker's report and the December 22, 2011 audiogram. The result is a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above. Although the record contains other employing establishment audiograms, these are insufficient to establish a ratable hearing loss.¹²

On appeal appellant asserts that OWCP's decision was incorrect and he should have been awarded a schedule award as the medical evidence establishes that he has work-related hearing loss and OWCP accepted his condition for bilateral hearing loss. The Board notes that while, appellant has an accepted bilateral hearing loss, his hearing loss is not, as discussed above, ratable under the standards used by OWCP to determine permanent impairment for schedule award purposes. With regard to hearing aids, the second opinion physician recommended a

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹² *See Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss). *See also James A. England*, 47 ECAB 115, 118 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; OWCP need not review uncertified audiograms).

hearing aid evaluation only not hearing aids while OWCP's medical adviser opined that hearing aids were not necessary.

Appellant may request a schedule award or increased 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.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 3, 2012 is affirmed.

Issued: July 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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