

FACTUAL HISTORY

On November 18, 2010 appellant, a 55-year-old supervisory firefighter, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of employment-related noise exposure. He noted that he developed a significant hearing shift due to constant noise exposure from tools, equipment, vehicles, aircraft and engine noise. Appellant also stated that, on March 4, 1993, he was inspecting a vehicle when another firefighter turned the siren on, causing him hearing loss. He notified his supervisor that same day.

By letter dated October 20, 1998, the Michigan Air National Guard informed appellant that his hearing showed a permanent threshold shift compared to his reference audiogram.

In a November 7, 2002 Michigan Air National Guard Memorandum, appellant was informed that his audiogram revealed a permanent threshold shift or a decrease in his hearing in both ears when compared to his reference audiogram of October 20, 1998. It was further noted that his hearing tests were still within normal limits.

An audiometric case history was submitted dated July 17, 1983 to September 27, 2002. Hearing conservation data and examinations were also submitted dated May 23, 1990 to September 7, 2010.

By letter dated December 1, 2010, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provided medical documentations pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

In a December 7, 2010 narrative statement, appellant stated that he worked for Selfridge Air National Guard Base (ANGB) Fire Department from July 1982 to the present. He reported that his first incident of hearing loss occurred at work on March 4, 1993 when a vehicle siren was turned on while he was standing next to the vehicle. Appellant stated that his employer at Selfridge ANGB Fire Department did not issue proper hearing protection devices until 1997. He stated that he was constantly exposed to noise and developed hearing loss while working around aircraft, tools, vehicles, engines, equipment and sirens. Appellant stated that he was still exposed to employment-related noise until his planned retirement on December 31, 2010. He further noted that he had a hole in his left eardrum since the age of five. Along with his narrative statement, appellant submitted noise survey reports dated March 14, 2003.

OWCP referred appellant to Dr. Lascelles Pinnock, a Board-certified otolaryngologist, for a second opinion evaluation on May 18, 2011. It prepared a statement of accepted facts addressing his federal work duties as an Air Force firefighter and the types of employment-related noise to which he was exposed. An audiogram was completed on May 18, 2011 which revealed the following decibels (dBA) losses at 500, 1,000, 2,000 and 3,000 cycles per second: 10, 10, 15 and 35 for the right ear and 10, 10, 20 and 20 for the left ear. Dr. Pinnock

noted that the audiogram showed bilateral normal hearing in low frequency and mild in high frequency worse in the right. Speech discrimination scores were 100 percent bilaterally. Dr. Pinnock diagnosed mild high frequency sensorineural hearing loss and opined that the hearing loss was due to appellant's workplace noise exposure.

By decision dated June 27, 2011, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On July 19, 2011 appellant filed a claim for a schedule award.

On October 28, 2011 OWCP's medical adviser reviewed Dr. Pinnock's May 18, 2011 otologic examination and agreed that appellant developed a mild high frequency sensorineural hearing impairment. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*), the medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss and determined that appellant had a zero percent monaural hearing loss in the left ear, a zero percent monaural hearing loss in the right ear and zero percent binaural hearing loss.³ The medical adviser concluded that appellant had no ratable hearing loss and opined that hearing aids should not be authorized. The date of maximum medical improvement was noted as May 18, 2011.

By decision dated December 21, 2011, OWCP denied appellant's schedule award claim finding that his hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations 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, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁵

According to the A.M.A., *Guides*, 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. 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.⁶ The remaining

² A.M.A., *Guides* (6th ed. 2009).

³ *Id.* at 252, Table 11-2.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ *See* A.M.A., *Guides* 250.

amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁷

ANALYSIS

Appellant filed a claim for bilateral hearing loss and was referred to Dr. Pinnock for a second opinion examination. After reviewing the statement of accepted facts and medical file, conducting a thorough physical evaluation and obtaining an audiogram on May 18, 2011, Dr. Pinnock diagnosed mild high frequency sensorineural bilateral hearing loss due to occupational noise exposure. OWCP's medical adviser concurred with this finding and further concluded that appellant had no ratable hearing loss to warrant a schedule award or hearing aids. OWCP accepted appellant's occupational disease claim for bilateral hearing loss. By decision dated December 21, 2011, it denied his schedule award claim.⁸

The Board finds that OWCP properly denied appellant's schedule award claim. According to the audiometry obtained on May 18, 2011, appellant's hearing thresholds were 10, 10, 15 and 35 on the right and 10, 10, 20 and 20 on the left. These total 70 and 60 dBA, respectively, for averages of 17.5 and 15 dBA. Because these averages are below the fence of 25 dBA, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.⁹ This does not mean that he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Thus, OWCP's medical adviser applied the proper standards to the May 18, 2011 audiogram. Appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's nonratable hearing loss.

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 appellant has not established a ratable loss of hearing such that he is entitled to a schedule award.

⁷ See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁸ This does not preclude appellant from seeking authorization for hearing aids or other appropriate medical treatment. 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).

⁹ See *L.F.*, docket No. 10-2115 (issued June 3, 2011).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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