



## **FACTUAL HISTORY**

On June 29, 2011 appellant, then a 71-year-old metal forger, filed an occupational disease claim alleging that he developed hearing loss as a result of employment-related noise exposure. He noted that he was exposed to loud noise while working in the forge shop. Appellant first became aware of his condition and of its relationship to his employment on January 1, 1990. He stopped work on April 30, 1993 the date of his retirement.

Appellant submitted a history of employee health records with audiogram results dated from October 19, 1979 to August 11, 1992. The August 11, 1992 audiogram results revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 10, 0, 5 and 15 for the right ear and 5, 10, 15 and 30 for the left ear.

In a July 1, 2011 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, noted that he examined appellant on June 29, 2011 regarding his hearing loss claim. He related that appellant complained of hearing loss and constant tinnitus in both ears for approximately 20 to 25 years. Dr. Randolph reviewed appellant's job history from 1958 until 2000. From 1958 until 1962, appellant was on active duty with the U.S. Marine Corporation. From 1962 until 1966, he worked as a bus driver and was not exposed to loud noises. From 1966 until 1993, appellant worked as a blacksmith and a foreman in the blacksmith shop at the employing establishment and was exposed to noise from steam hammers, drop hammer machines and furnaces. Hearing protection was utilized where required. From 1993 until 2000, appellant worked at a golf course with no significant noise exposure. Upon examination, Dr. Randolph observed normal external auditory canals and tympanic membranes. An audiogram completed on June 29, 2011 revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 10, 20, 30 and 60 for the right ear and 10, 20, 60 and 65 for the left ear. Dr. Randolph diagnosed bilateral sensorineural hearing loss. He also stated that an audiogram revealed hearing loss with an audiometric configuration entirely compatible with hearing loss due to a combination of part noise exposure and the aging process. Dr. Randolph concluded that in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had 7.5 percent monaural hearing loss in the right ear, 20.65 percent monaural hearing loss in the left ear and 9.69 percent binaural hearing loss. He stated that no additional rating for tinnitus was indicated and that appellant was a candidate for bilateral fitting of appropriate hearing aids.

By letter dated August 8, 2011, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history. He was asked to identify when he related his hearing loss to conditions of employment and identify all nonoccupational exposure to noise. OWCP also requested that appellant provide medical documentation 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 he worked, the sources and period of noise exposure for each location and whether he wore ear protection.

In an August 3, 2011 statement, the employing establishment noted that appellant worked at the employing establishment as a metal forger from August 20, 1966 to April 30, 1993 and was exposed to noise from hammers, drop forge, trip hammers and background noise.

In an August 18, 2011 statement, appellant contended that his hearing tests showed hearing loss related to exposure to loud noise and noted that he used rubber earplugs as protection against loud noise. He stated that his hobbies outside of his employment included hunting and fishing.

On November 10, 2011 OWCP requested that Dr. Randolph clarify his July 1, 2011 report and answer certain questions. In a November 21, 2011 report, Dr. Randolph agreed with the statement of accepted facts and noted that a February 3, 1966 audiogram revealed entirely normal hearing in both ears. He stated that appellant's August 11, 1992 audiogram, which was the last audiogram before he retired, revealed a mild high tone hearing loss in his right ear and hearing loss at 3,000 and 4,000 cycles in the left ear. Dr. Randolph diagnosed bilateral sensorineural hearing loss and opined that the workplace exposure as described in the material provided was of sufficient intensity and duration to have caused and/or aggravated appellant's hearing loss. He further explained that appellant's left ear hearing loss developed during his employment and was caused by or aggravated by noise exposure but his right ear hearing loss was not compatible with hearing loss due to noise exposure. Utilizing the A.M.A., *Guides* (6<sup>th</sup> ed. 2009), Dr. Randolph concluded that appellant had zero percent ratable hearing loss in both ears as of August 1992. He reported that appellant's current ratable hearing loss was 7.5 percent in the right ear, 20.65 percent in the left ear and 9.69 percent binaural hearing loss but explained that the increase in his hearing loss since he left civil service would not be due to his industrial noise exposure during his employment. Dr. Randolph opined that appellant was a candidate for bilateral fitting of appropriate hearing aids, but that in 1992 he would not be a candidate for hearing aid evaluation only in his left ear, but not in his right ear.

On December 7, 2011 an OWCP medical adviser reviewed Dr. Randolph's July 1 and November 10, 2011 otologic examination reports and agreed that appellant's left sensorineural hearing loss in the left ear was due to occupational noise exposure. He explained that the 1992 audiogram showed an early very high tone hearing loss in the right ear which was not compatible with a hearing loss due to noise exposure. The medical adviser stated that since 1992 there had been significant deterioration in sensorineural hearing and agreed with Dr. Randolph that any increase in appellant's hearing impairment since he retired from federal service would not be due to industrial noise exposure during his federal employment. He 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 and a zero percent monaural hearing loss in the right ear for appellant's work-related left ear hearing impairment. The medical adviser concluded that appellant had no ratable hearing loss. He authorized hearing aids for the left ear only.

By decision dated December 21, 2011, OWCP accepted appellant's claim for left monaural hearing loss and denied his schedule award claim finding that his hearing loss was not severe enough to be considered ratable. It authorized hearing aids for the left ear only.

## LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA<sup>2</sup> 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 of 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* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</sup>

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 cycles per second, the losses at each frequency are added up and averaged. 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>4</sup> The remaining 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.<sup>5</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>6</sup>

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.<sup>7</sup> The A.M.A., *Guides* state that, if tinnitus interferes with [Activities of Daily Living (ADLs)], including sleep, reading (and other tasks requiring concentration), enjoying of quiet recreation and emotional well being, up to five percent may be added to a measurable binaural hearing impairment.<sup>8</sup>

## ANALYSIS -- ISSUE 1

Appellant filed a claim for hearing loss and was examined by Dr. Randolph, who reviewed appellant's job history and noted that from 1966 until 1993 he worked as a foreman

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

<sup>4</sup> *See* A.M.A., *Guides* 250.

<sup>5</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>6</sup> *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

<sup>7</sup> *See* A.M.A., *Guides* 249.

<sup>8</sup> *Id.* *See also* *Robert E. Cullison*, *supra* note 6; *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

and blacksmith at the employing establishment where he was exposed to noise from steam hammers, drop hammer machines and furnaces. In a November 21, 2011 addendum report, Dr. Randolph reviewed the statement of accepted facts and appellant's medical records. He noted that appellant's last audiogram in 1992 before he retired revealed a mild high tone hearing loss in his right ear and hearing loss at 3,000 and 4,000 cycles in the left ear. Dr. Randolph diagnosed bilateral sensorineural hearing loss. He opined that appellant's left ear hearing loss was caused or aggravated by noise exposure during his employment but stated that his right ear hearing loss was not compatible with hearing loss due to noise exposure. Dr. Randolph noted that appellant's hearing had deteriorated since his retirement but determined that the increase in his hearing loss since he left civil service was not due to industrial noise exposure at work. He stated that at the time of appellant's retirement he was entitled to hearing aids for the left ear only. OWCP's medical adviser concurred with this finding and further concluded that appellant had no ratable hearing loss to warrant a schedule award. By decision dated December 21, 2011, OWCP accepted his claim for left monaural hearing loss, but denied a schedule award and authorized hearing aids for the left ear.

The Board finds that OWCP properly denied appellant's schedule award claim. According to the August 11, 1992 audiogram, appellant's hearing thresholds were 10, 0, 5 and 15 on the right and 5, 10, 15 and 30 on the left. These total 30 and 60 decibels, respectively, for averages of 7.5 and 15.0 decibels. Because these averages are below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.<sup>9</sup> This does not mean that he does not suffer from 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, appellant's hearing loss was not ratable.

On appeal, appellant relates that he worked in the forge shop for 30 years and now suffered from significant hearing loss due to his exposure to high levels of noise. Both Dr. Randolph and the medical adviser determined, however, that appellant's left ear hearing loss developed during his employment and was caused or aggravated by noise exposure but that the right ear hearing loss was not compatible with hearing loss due to noise exposure. They further found that any increase in appellant's hearing impairment since his retirement would not be due to industrial noise exposure during his federal employment but from age. Appellant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if the probative medical evidence of record establishes a causal relationship between the increased loss and the accepted employment exposure.<sup>10</sup> The medical evidence of record, however, does not establish that his right hearing loss or his increased hearing loss of the left side were caused by his federal employment. Thus, the medical evidence does not establish that appellant is entitled to a schedule award for ratable hearing loss. For this reason, the Board finds that OWCP properly denied a schedule award for his nonratable hearing loss.

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<sup>9</sup> See *G.M.*, Docket No. 11-1295 (issued January 25, 2012).

<sup>10</sup> *J.S.*, Docket No. 11-1634 (2012); see *Paul Fierstein*, 51 ECAB 381 (2000); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b)(2) (April 1995).

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.

### **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.<sup>11</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.<sup>12</sup> 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly authorized hearing aids for appellant's left ear but not the right ear as the medical evidence of record supports that he is entitled to hearing aids for the left ear only. Both Dr. Randolph and OWCP's medical adviser found that appellant was only entitled to hearing aids for his left ear work-related hearing loss, but not for his right ear. As previously noted, OWCP is obligated to pay for medical treatment of a work-related injury.<sup>14</sup> In this case, it accepted appellant's claim for left monaural hearing loss but not for right hearing loss impairment. Accordingly, OWCP properly authorized hearing aids for the left ear only. On appeal, appellant alleges that he is in great need of hearing aids and that his physician recommended wearing two hearing aids. He did not submit any medical evidence from a physician establishing that he sustained right monaural hearing loss as a result of his employment or recommending that he be provided with hearing aids for the right ear. Thus, the Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids for the right ear.<sup>15</sup>

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<sup>11</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>12</sup> 5 U.S.C. § 8103.

<sup>13</sup> See *F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, *supra* note 6, Chapter 3.4003(d)(2) (October 1990).

<sup>14</sup> *Supra* note 10.

<sup>15</sup> This does not preclude appellant from seeking authorization for hearing aids or other appropriate medical treatment. See Federal (FECA) Procedure Manual, *supra* note 13; *Raymond VanNett*, 44 ECAB 480 (1993).

**CONCLUSION**

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award. The Board also finds that OWCP did not abuse its discretion in denying hearing aids.

**ORDER**

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

Issued: July 25, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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