

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

G.B., Appellant)	
)	
and)	Docket No. 12-310
)	Issued: June 21, 2012
DEPARTMENT OF TRANSPORTATION,)	
MOTOR CARRIER SAFETY)	
ADMINISTRATION, Washington, DC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 21, 2011 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated August 9, 2011. 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 this case.

ISSUE

The issue is whether appellant has more than a 20 percent binaural hearing loss causally related to his federal employment, for which he received a schedule award.

FACTUAL HISTORY

Appellant, a 62-year-old motor vehicle inspector, filed an occupational disease claim (Form CA-2) on January 21, 2011, alleging that he sustained a bilateral hearing loss caused by factors of his federal employment. Since he began working in April 2002, appellant was

¹ 5 U.S.C. § 8101 *et seq.*

exposed to loud noises from the engines and air brake systems of large commercial motor vehicles, including 18-wheel trucks, for an average of five hours per day. He was not given hearing protection. Appellant submitted results of audiograms dated March 27 and May 27, 2009, which showed varying degrees of bilateral hearing loss.

On April 4, 2011 OWCP referred appellant, together with a statement of accepted facts, to Dr. Gregory S. Rowin, an otolaryngologist, for a second opinion. In an April 28, 2011 report, Dr. Rowin stated that appellant's workplace noise exposure was of sufficient intensity and duration to have caused the hearing loss in question. He diagnosed mild to severe, bilateral noise-induced sensorineural hearing loss and opined that this condition was due to noise exposure at appellant's federal employment. Dr. Rowin recommended ear protection and hearing aids. An audiogram performed on Dr. Rowin's behalf on April 28, 2011 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following decibel losses: 35, 30, 40 and 60 for the right ear and 25, 25, 35 and 50 for the left ear respectively. Based on these results and in accordance with American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009), he determined that appellant had a 15 percent binaural hearing loss. Dr. Rowin found that appellant had an additional five percent bilateral hearing loss due to employment-related tinnitus on the grounds that his daily living activities were affected by this condition.

In a June 8, 2011 report, an OWCP medical adviser reviewed Dr. Rowin's report and audiometric test results. He concurred with Dr. Rowin's findings that appellant had a 15 percent bilateral sensorineural hearing loss and a 5 percent bilateral hearing loss due to tinnitus. The medical adviser determined that the date of maximum medical improvement was April 28, 2011, the date of Dr. Rowin's examination. He authorized hearing aids.

In a June 9, 2011 decision, OWCP accepted appellant's claim for binaural hearing loss.

On June 16, 2011 appellant filed a Form CA-7 claim for a schedule award based on an alleged binaural hearing loss.

By decision dated August 9, 2011, OWCP granted appellant a schedule award for a 20 percent binaural hearing loss. This award covered the period from April 28, 2011 to February 2, 2012, for a total of 40 weeks of compensation.

LEGAL PRECEDENT

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. 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

² 5 U.S.C. § 8107.

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

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

ANALYSIS

OWCP accepted that appellant sustained a bilateral hearing loss due to noise. It developed the claim by referring him to Dr. Rowin. On April 28, 2011 Dr. Rowin examined appellant and an audiogram was obtained on the physician's behalf. He found, using OWCP's standard procedures, that appellant's noise exposure in his federal employment was sufficient to cause binaural hearing loss. The April 28, 2011 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 25, 25, 35 and 50 respectively in the left ear. The total decibel loss in the left ear is 135. When divided by 4, the result is an average hearing loss of 33.75 decibels. The average of 33.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 8 decibels, which when multiplied by the established factor of 1.5 computes a 13.125 percent hearing loss in the left ear. The audiogram tested decibel losses for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 35, 30, 40 and 60 respectively. The total decibel loss in the right ear is 165. When divided by 4, the result is an average hearing loss of 41.25 decibels. The average hearing loss of 41.25 is reduced by the fence of 25 decibels to 16.25, which when multiplied by the established factor of 1.5 computes a 24.375 percent hearing loss in the right ear. Therefore, under this calculation appellant had a 15 percent binaural hearing loss. In addition, Dr. Rowin found that appellant had a five percent binaural hearing loss due to tinnitus. OWCP's medical adviser concurred in this finding, which OWCP relied on in granting appellant a 20 percent binaural schedule award. As there was no other medical evidence showing that appellant had a greater hearing loss causally related to employment factors, the Board affirms OWCP's August 9, 2011 schedule award.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.700.4.b (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).

Although appellant submitted results from audiometric testing performed on March 27 and May 27, 2009, these audiograms are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy his burden of proof.¹⁰ Dr. Rowin provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were due to the noise in appellant's employment. The Board finds that Dr. Rowin's report represents the weight of the evidence.

CONCLUSION

The Board finds that appellant has no greater than a 20 percent binaural hearing loss causally related to his federal employment, for which OWCP granted him a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2011 is affirmed.

Issued: June 21, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).