



## **FACTUAL HISTORY**

On December 27, 2010 appellant, then a 64-year-old mechanical technician, filed an occupational disease claim alleging that noise exposure at work for 38 years caused hearing loss. In letters dated December 30, 2010, OWCP informed him of the type of evidence needed to support his claim and asked that the employing establishment provide information about his employment, including noise exposure and hearing conservation measures. The employing establishment conceded that appellant was exposed to noise at work from turbines, coal pulverizers, boiler feed pumps, steam leaks, etc. It advised that he was provided hearing protection and maintained that his annual audiograms did not show a ratable impairment. The employing establishment forwarded a position description, a medical chart review and records of audiograms dated from July 17, 1979 to June 22, 2010. The June 22, 2010 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 0, 0, 5 and 15 decibels; left ear 15, 0, 10 and 15 decibels, respectively.

In February 2011, OWCP referred appellant to Dr. Phillip Klapper, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. In a February 22, 2011 report, Dr. Klapper reported physical examination findings of normal canals, drums, drum motility and results of basic fork tests. He advised that appellant had no evidence of an acoustic neuroma or Meniere's disease. Dr. Klapper indicated that, upon review of the statement of accepted facts and medical record, there was a documented progression of hearing loss during appellant's period of employment and recommended ear protection and hearing aids. He submitted calibration certification and results of audiometric testing performed by a certified audiologist. The audiogram performed on February 22, 2011 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 10, 15, 20 and 30 decibels; left ear 20, 10, 20 and 25 decibels, respectively.

On March 23, 2011 OWCP accepted that appellant sustained bilateral noise-induced hearing loss. On March 23, 2011 OWCP's medical adviser reviewed Dr. Klapper's report and the audiogram dated February 22, 2011. He advised that the date of maximum medical improvement was February 22, 2011 and calculated appellant's impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*)<sup>2</sup> and current OWCP standards. The medical adviser concluded that appellant's bilateral hearing loss was not severe enough to be ratable. He checked a box "no" regarding whether hearing aids should be authorized.

In a March 24, 2011 decision, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable and that he would not benefit from hearing aids.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>3</sup> and its implementing federal regulations<sup>4</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition is to be used.<sup>7</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 and averaged.<sup>8</sup> The “fence” of 25 decibels is then 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>9</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>10</sup> 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.<sup>11</sup> The Board has concurred in OWCP’s adoption of this standard for evaluating hearing loss.<sup>12</sup>

## ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss because the February 22, 2011 audiogram results did not demonstrate ratable values.

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>8</sup> A.M.A., *Guides*, *supra* note 2 at 250.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 251.

<sup>12</sup> *Horace L. Fuller*, 53 ECAB 775 (2002).

The February 22, 2011 audiogram, the only study that complied with OWCP certification procedures,<sup>13</sup> demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second of 10, 15, 20 and 30 decibels on the right for a total of 75 decibels. This figure, when divided by 4, results in an average hearing loss of 18.75 decibels. The average of 18.5 decibels, when reduced by the 25-decibel fence, results in a zero percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 10, 20 and 25, for a total of 75 decibels. This figure, when divided by 4, results in an average hearing loss of 18.75 decibels, which when reduced by 25 decibels, also results in a zero percent monaural hearing loss of the left ear. The Board thus finds that, as the February 22, 2011 audiogram did not demonstrate that appellant's hearing loss was ratable, he was not entitled to a schedule award for his accepted hearing loss condition.

However, with regards to the need for hearing aids, appellant's hearing loss claim was accepted as employment related. While OWCP properly determined that his hearing loss was nonratable for schedule award purposes, Dr. Klapper, the referral physician, recommended hearing aids. OWCP's medical adviser checked a form box "no," indicating that hearing aids were not authorized. OWCP denied appellant's schedule award claim and also denied hearing aids. The Board notes that the medical adviser did not provide any explanation for his disagreement with OWCP's referral physician regarding whether hearing aids should be authorized. OWCP's March 24, 2011 decision denying hearing aids provided no findings or explanation supporting its determination. As the record was unclear as to why OWCP declined to authorize hearing aids, the Board remanded the case for further development regarding this aspect of appellant's claim.<sup>14</sup>

Appellant may request a 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.

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<sup>13</sup> OWCP procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include: that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8(a) (September 1995); see *Vernon Brown*, 54 ECAB 376 (2003). The Board further notes that the demonstrated values in the June 22, 2010 employing establishment audiogram would not be ratable, nor would the studies performed between 1979 and 2009.

<sup>14</sup> *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

**CONCLUSION**

The Board finds that appellant did not establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable. The Board further finds the case not in posture for decision regarding whether hearing aids should be authorized.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: May 15, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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