

FACTUAL HISTORY

Appellant, a 56-year-old border patrol agent, filed an occupational disease claim (Form CA-2) on July 1, 2010, alleging that he sustained a binaural hearing loss caused by factors of his federal employment. While working at the employing establishment from January 1985 to September 2010, he was exposed to loud noise from diesel engines on trains, buses leaving and entering freight yards, daily traffic from semi-tractor trailers and other vehicles and firearms training with automatic weapons. Appellant was not given hearing protection. He stated that he and his coworkers stuffed ammunition into their ears as protection against loud noise. Appellant submitted results of audiograms dated 1981 to 2010, which showed varying degrees of binaural hearing loss.

On February 18, 2011 OWCP referred appellant with a statement of accepted facts to Dr. James T. Wright, a Board-certified otolaryngologist, for a second opinion. In a March 30, 2011 report, Dr. Wright stated that appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question. He diagnosed noise-induced sensorineural hearing loss and opined that this condition was due to noise exposure at appellant's federal employment. Dr. Wright recommended noise protection and stated that appellant was a borderline candidate for hearing aids. An audiogram performed on his behalf on February 30, 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: 15, 20, 25 and 25 for the right ear and 15, 20, 20 and 25 for the left ear respectively. Based on these results and in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009), Dr. Wright determined that appellant had a zero percent binaural hearing loss. He found, however, that appellant had a five percent binaural hearing loss due to employment-related tinnitus on the grounds that his daily living activities were affected by this condition.

In an April 13, 2011 report, an OWCP medical adviser reviewed Dr. Wright's report and audiometric test results. He concluded that appellant had a zero percent binaural sensorineural hearing loss but adopted Dr. Wright's finding of a five percent binaural hearing loss due to tinnitus. The medical adviser determined that the date of maximum medical improvement was March 30, 2010, the date of Dr. Wright's examination. He checked a box indicating that hearing aids were not authorized.

In an April 18, 2011 decision, OWCP accepted appellant's claim for binaural hearing loss caused by tinnitus.

On April 29, 2011 appellant filed a Form CA-7 claim for a schedule award based on an alleged binaural hearing loss.

By decision dated May 17, 2011, OWCP granted appellant a schedule award for a five percent binaural hearing loss. This award covered the period March 30 to June 7, 2011 or a total of 10 weeks of compensation.

On June 16, 2011 appellant requested reconsideration.

Appellant submitted a June 2, 2011 report from Dr. Gregory S. Rowin, an osteopath, who stated that on examination appellant demonstrated an overall 30 percent hearing loss, markedly worse in the high frequencies, down approximately 40 percent on average. Dr. Rowin noted that appellant had a history of working around loud noise; he stated that loud noise exposure is a factor in high frequency hearing loss. He asserted that, given appellant's age and high frequency loss, his hearing loss was probably secondary to his work around loud noise. Dr. Rowin opined that appellant would benefit from hearing protection and hearing aids. He did not submit an audiogram.

By decision dated September 15, 2011, OWCP denied modification of the May 17, 2011 decision.

LEGAL PRECEDENT -- ISSUE 1

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 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

² *Id.* at § 8107.

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

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.0700.4b (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).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a binaural hearing loss due to work-related noise exposure. It developed the claim by referring appellant to Dr. Wright. On February 30, 2011 Dr. Wright 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 not sufficient to cause ratable binaural hearing loss. The February 30, 2011 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 15, 20, 20 and 25 respectively in the right ear. The total decibel loss in the right ear is 80. When divided by 4, the result is an average hearing loss of 20 decibels. The average hearing loss of 20 is reduced by the fence of 25 decibels to equal 0 decibels, which when multiplied by the established factor 1.5, resulted in a 0 percent impairment of the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cycles per second and recorded decibel losses of 15, 20, 25 and 25 respectively. The total decibel loss in the left ear is 85. When divided by 4, the result is an average hearing loss of 21.50 decibels. The average hearing loss of 21.50 is reduced by the fence of 25 decibels to equal 0, which when multiplied by the established factor of 1.5, resulted in 0 percent impairment of the left ear. Therefore, under this calculation appellant had a zero percent binaural hearing loss.

However, Dr. Wright 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 five percent binaural schedule award. The Board notes that the A.M.A., *Guides* provide that tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. The Board has, therefore, allowed an addition up to five percent for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform the activities of daily living.¹⁰

Appellant sought an additional award and requested reconsideration. In support of his request he submitted the June 2, 2011 report of Dr. Rowin, who opined that appellant had an overall 30 percent hearing loss. This report is lacking in probative value, however, as it was not supported by audiometric evidence.¹¹

Although appellant submitted results from audiometric testing performed from January 1985 to September 2010, these audiograms are insufficient to satisfy appellant's 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,

¹⁰ *R.D.*, 59 ECAB 127 (2007).

¹¹ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

therefore, is insufficient to satisfy his burden of proof.¹² Dr. Wright 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 his report represents the weight of the evidence. The Board, therefore, affirms OWCP's September 15, 2011 decision, as there was no other probative evidence in the record establishing that appellant sustained any greater impairment.

On appeal, appellant contends that he sustained a hearing loss greater than the five percent awarded by OWCP. In the instant case, the audiometric test performed on February 30, 2011 was the only test of record performed within the past two years that was certified by a physician.¹³ This test showed that there was no documented, measurable hearing loss attributable to appellant's federal employment. As noted above, it is appellant's burden to submit a properly certified audiogram for review if he objects to the audiogram selected by OWCP for determining the degree of hearing loss.¹⁴ The Board will affirm that he has not established that he is entitled to more than five percent schedule award for binaural hearing loss.¹⁵

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, reduces the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁶ OWCP must, therefore, exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.¹⁷

ANALYSIS -- ISSUE 2

The Board further finds that the medical evidence of record supports that appellant is not entitled to hearing aids. There is no medical evidence from a physician recommending that he be provided with hearing aids or any other medical treatment for his employment-related hearing loss. While Dr. Wright stated that appellant was a borderline case for requiring hearing aids, this opinion is at best equivocal and, as noted above, it is within OWCP's discretion to determine whether appellant required hearing aids pursuant to section 8103. The Board finds that under

¹² *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹³ *See H.S.*, 58 ECAB 690 (2007); *John C. Messick*, 25 ECAB 333 (1974).

¹⁴ *See Holmes*, *supra* note 12.

¹⁵ The Board notes that an award for hearing loss should be based on objective medical evidence, in accordance with the standards contained in the A.M.A., *Guides*, as outlined above.

¹⁶ 5 U.S.C. § 8103.

¹⁷ OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988).

these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.¹⁸

CONCLUSION

The Board finds that appellant has no greater than a five percent binaural hearing loss for which OWCP granted him a schedule award. The Board finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and May 17, 2011 are affirmed.

Issued: May 2, 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

¹⁸ 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).