

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

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C.A., Appellant )

and )

**DEPARTMENT OF THE NAVY, NAVAL  
SUPPLY SYSTEMS COMMAND,  
Bremerton, WA, Employer** )

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**Docket No. 12-830  
Issued: November 21, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 5, 2012 appellant filed a timely appeal from a February 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has established that he has a ratable hearing loss entitling him to a schedule award.

**FACTUAL HISTORY**

On September 26, 2011 appellant, then a 72-year-old retired material sorter and classifier, filed an occupational disease claim (Form CA-2) alleging binaural hearing loss due to

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment-related noise exposure. He stated that he worked around loud noise and a 2000 audiogram taken near retirement that showed hearing loss from noise exposure. Appellant retired on January 3, 2001.

By letter dated October 14, 2011, OWCP requested the employing establishment provide a copy of all medical examinations pertaining to appellant's hearing or ear problems, including any preemployment examinations and audiograms. By letter dated October 14, 2011, it requested additional factual evidence from appellant.

Appellant provided his employment history. He reported that from 1958 to 1977, he served in the military as a steward/mess specialist and was exposed to noise generated by submarines. Hearing protection was neither provided nor used. From February 12, 1978 to September 27, 1980, appellant was a federally employed supply clerk (typing) with no known noise exposure. From September 28, 1980 to his retirement on January 3, 2001, he was federally employed as a warehouse worker and materials handler/classifier. Appellant reported exposure to noise generated while inspecting railcars and motor vehicles while running, as well as noise while unloading trucks with forklifts and pallet jacks. He stated hearing protection was neither provided nor used.

In a November 4, 2002 statement, appellant stated that he experienced annoying ringing in both of his ears before his retirement. After he retired, he was told by an examining health care provider that he had bilateral high frequency hearing loss. Appellant stated no claim was made at that time as the ringing did not bother him much, but the ringing had become worse and caused an occasional sleepless night. He submitted copies of employing establishment health unit reports, including hearing conservation data and results of a May 3, 2000 audiogram.

In a September 29, 2011 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist to whom appellant was referred by the employing establishment, noted the history of injury, a review of the medical record and listed examination findings of September 26, 2011. He noted that appellant had experienced intermittent tinnitus in both ears with the left ear being more severe and rapidly worsening. Dr. Randolph also noted that appellant was awarded a 10 percent service-connected disability for tinnitus from the Veterans Administration in 2000. He opined that appellant had bilateral sensorineural hearing loss. Dr. Randolph stated that the right ear hearing loss was causally related to past military and civil service industrial noise exposure with some influence of the aging process while the left ear hearing loss would not have been aggravated by industrial noise exposure as it was in the lower tones. He also opined that the hearing loss in the left ear would not have exceeded the right ear loss due to industrial causes. Dr. Randolph recommended bilateral hearing aids, but indicated that the hearing aid evaluation and fitting for the left ear should be delayed until an acoustic neuroma has been ruled out as an aggravating factor in the left ear or, if an acoustic neuroma is found, it has been treated or determined to be stable. An accompanying September 26, 2011 audiogram indicated that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 45, 50, 75 and 85 for the left ear, and 5, 20, 25 and 40 for the right ear. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Randolph opined that appellant had zero percent hearing loss in the right ear and 58.12 percent in the left ear, with a binaural hearing loss of 9.69 percent.

On January 6, 2012 OWCP forwarded appellant's medical record, including a statement of accepted facts, audiograms and noise exposure data, to Dr. Randolph. It requested that he confirm his September 29, 2011 report was consistent with the statement of accepted facts.

In a January 23, 2012 addendum, Dr. Randolph stated that the earliest audiogram of record dated November 19, 1981 revealed a bilateral high frequency sensorineural hearing loss due to noise exposure occurring prior to November 19, 1981. Under the sixth edition of the A.M.A., *Guides*, he stated that hearing loss was zero percent. The September 26, 2011 audiogram performed in Dr. Randolph office revealed a very significant bilateral sensorineural hearing loss ratable at zero percent in the right ear and 58.125 percent in the left ear. He noted that appellant left his civil service employment on January 3, 2001 and the May 3, 2000 audiogram revealed a hearing loss of zero percent in each ear under the sixth edition of the A.M.A., *Guides*. At that time, appellant was only a candidate for hearing aid evaluation in the left ear only. Dr. Randolph stated that since 2001 appellant's hearing had degenerated due to causes other than industrial noise exposure. He explained that hearing loss due to noise exposure occurred at the time of noise exposure and did not become worse at a later date because of past noise exposure. Between 1981 and May 3, 2000, the hearing loss in appellant's right ear had not increased in severity in a manner any greater than that which would be expected on the basis of presbycusis, but the increase in his left ear hearing loss exceeded that which would be expected on the basis of presbycusis. Dr. Randolph opined that the sensorineural hearing loss was due in part to appellant's civil service industrial noise exposure in the left ear only based on the May 3, 2000 audiogram. However the hearing loss in the right ear had not progressed in excess of that which would normally be predicted on the basis of presbycusis. He recommended that appellant have a magnetic resonance imaging (MRI) scan to rule out an acoustic neuroma in his left ear.

On February 3, 2012 OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On February 7, 2012 appellant filed a claim for a schedule award. He noted the Department of Veterans Affairs had awarded him a 10 percent service-connected disability for tinnitus in 2000.

The case record was forwarded to an OWCP medical adviser for review and an opinion as to whether appellant had a ratable hearing loss. In a February 21, 2012 report, Dr. Lois J. Weaver, a Board-certified internist, reviewed appellant's medical record and the statement of accepted facts. She agreed with Dr. Randolph that the May 3, 2000 audiogram represented the bilateral high frequency pattern of sensorineural hearing loss most probably attributable to federal employment, from which he retired in 2001, since hearing loss due to noise exposure occurred at the time of noise exposure and generally did not become worse at a later date. The May 3, 2000 otologic and audiologic testing revealed the following: testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 0, 10, 15 and 30 respectively. The decibel losses were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss of 13.75 decibels. This average loss was then reduced by 25 decibels to equal a negative figure or zero percent left monaural loss. Testing for the right ear revealed decibel losses of 0, 5, 10 and 15 respectively. The decibel losses were totaled at 30 decibels and were divided by 4 to obtain the average hearing loss of 7.5 decibels. This average loss was then reduced by 25 decibels, resulting in a negative figure or zero percent right

monaural loss. Dr. Weaver concluded that appellant had no ratable hearing loss under the sixth edition of the A.M.A., *Guides*. She recommended that hearing aids be authorized after a magnetic resonance imaging scan was conducted to rule out acoustic neuroma in the left ear prior to testing and fitting for hearing aids.

By decision dated February 22, 2012, OWCP found that appellant did not have a ratable hearing loss that would entitle him to a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations<sup>2</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. FECA does not, however, 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.<sup>3</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</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>7</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>8</sup>

### **ANALYSIS**

In rating the extent of noise-induced hearing loss due to occupational exposure, both Dr. Randolph and OWCP's medical adviser reviewed a May 3 2000 audiogram prior to appellant's retirement on January 3, 2001 and agreed that of the audiograms of record, the

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<sup>2</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b (January 2010).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon.*, granted (modifying prior decision) Docket No. 01-1570 (issued August 13, 2002).

May 3, 2000 audiogram was the best representation of the extent of loss due to appellant's noise exposure in his federal employment.

While noise-induced hearing loss may not typically progress after exposure to noise ceases, an OWCP medical adviser or consultant will provide a well-rationalized opinion for selecting one audiogram over another.<sup>9</sup> The Board finds that the medical adviser provided rationale for selecting the May 3, 2000 audiogram over other available audiograms.

OWCP's medical adviser reviewed the otologic and audiologic testing performed on appellant and agreed with Dr. Randolph that the May 3, 2000 audiogram represented the bilateral high frequency pattern of sensorineural hearing loss most probably attributable to federal employment, from which appellant retired in 2001, as opposed to the September 26, 2011 audiogram. He explained that hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date. The medical adviser noted that Dr. Randolph's examination showed that appellant had a known hearing loss when he left military service and that the left ear hearing loss was advancing rapidly. He stated that the May 3, 2000 audiogram reflected some hearing loss in frequencies affected by noise, which was a slight increase from appellant's 1981 audiogram. However, the medical adviser found no basis on which to attribute appellant's hearing loss after 2000 to his employment. The Board finds that the medical adviser provided sound medical reasoning for selecting the May 3, 2000 audiogram as representing appellant's employment-related hearing loss. It was a complete audiogram performed within a year prior to appellant's retirement. Additionally the subsequent audiogram of September 25, 2011 showed deterioration in appellant's hearing postretirement, which is not typical of hearing loss due to noise exposure as the hearing loss does not get worse at a later date.<sup>10</sup>

OWCP's medical adviser properly applied OWCP's standardized procedures to the May 3, 2000 audiogram. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 0, 10, 15 and 30 respectively. The decibel losses were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss of 13.75 decibels. Reducing this average loss by 25 decibels resulted in a negative figure. Testing for the right ear revealed a total loss of 30 decibels (0, 5, 10 and 15, respectively), which when divided by 4, produced an average hearing loss of 7.5 decibels. Reducing this average loss by 25 decibels again resulted in a negative figure. Based on these calculations, the medical adviser properly concluded that appellant had a zero percent binaural sensorineural hearing loss and,

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<sup>9</sup> *R.B.*, Docket No. 10-1512 (issued March 24, 2011); see *John C. Messick*, 25 ECAB 333 (1974) (holding that when several audiograms are in the case record and all are made within approximately two years of one another and are submitted by more than one physician, OWCP should give an explanation for selecting one audiogram over the others).

<sup>10</sup> See *Marco A. Padilla*, 51 ECAB 2020 (1999) (where OWCP's medical adviser provided sufficient rationale for selecting an audiogram on the grounds that it was more representative of appellant's employment-related hearing loss than were those submitted prior to retirement and those that were incomplete and undated).

therefore, did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*.<sup>11</sup>

The Board finds that the weight of the medical opinion establishes that appellant does not have ratable hearing loss in accordance with the sixth edition of the A.M.A., *Guides* based on OWCP's medical adviser's February 21, 2012 report.

On appeal, appellant disagrees that his hearing loss was not ratable when he retired from federal employment in 2000. This is a medical issue and must be established by rationalized medical evidence. As noted the May 3, 2000 audiogram represents the bilateral high frequency pattern of sensorineural hearing loss most attributable to federal employment and has been found nonratable under the relevant standards of the A.M.A., *Guides*.

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 failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

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<sup>11</sup> The Board notes that while OWCP properly determined that appellant's hearing loss was nonratable for schedule award purposes, it did not address the hearing aid issue, which both Dr. Randolph and OWCP's medical adviser recommended.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2012  
Washington, DC

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

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

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