

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

J.S., Appellant

and

**DEPARTMENT OF THE NAVY,
COMMANDER US PACIFIC FLEET
SHIPYARDS, Bremerton, WA, Employer**

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**Docket No. 12-967
Issued: October 12, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 26, 2012 appellant filed a timely appeal from a February 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for hearing loss. 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 met his burden of proof to establish that he is entitled to a schedule award for his hearing loss.

FACTUAL HISTORY

On February 16, 2011 appellant, then a 56-year-old naval architecture technician, filed an occupational disease claim alleging hearing loss caused by factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

He stated that he continued to be exposed to noise at work. Appellant's work history, employing establishment audiograms and medical records accompanied the claim.

The record reflects that appellant worked for the employing establishment since 1977 and was exposed to noise from chipping guns, grinders, hammers, sandblasters, carbon arc welders and diesel motors. Hearing protection was provided and used. The employer submitted hearing conservation records which first noted appellant's hearing levels on March 15, 1977.

In a February 21, 2011 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, to whom appellant was referred by the employing establishment, stated that he examined appellant on February 16, 2011 and noted his history and treatment. Appellant related that he noticed a progressive hearing loss for 5 to 10 years and experienced a constant tinnitus in both ears. Dr. Randolph noted that appellant had difficulty understanding communication with background noise and turned the volume up on the television. He provided a physical and audiometric examination of appellant. Dr. Randolph noted that appellant had cerumen impaction in both external auditory canals. Both tympanic membranes were normal and air conduction was greater than bone conduction bilaterally. Dr. Randolph explained that an audiometric examination was performed by a qualified audiologist and that the examination revealed a bilateral high-frequency sensorineural hearing loss with speech reception thresholds of 10 decibels in both ears. He advised that discrimination scores were measured at 96 percent in the right ear and 100 percent in the left ear and diagnosed sensorineural hearing loss, bilateral. Dr. Randolph explained that appellant's audiogram revealed hearing loss with an audiometric configuration entirely compatible with hearing loss due to past noise exposure and the audiogram was performed after cerumen impaction was removed. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6th ed. 2009) to determine that appellant had no ratable loss in either ear. Dr. Randolph explained that no additional rating for tinnitus was indicated. He advised that appellant was a candidate for bilateral fitting of appropriate hearing aids due to industrial noise exposure. Audiometric findings dated February 16, 2011 revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 hertz: 15, 5, 0 and 35 for the right ear and 15, 15, 5 and 35 for the left ear.

By letter dated August 15, 2011, OWCP advised Dr. Randolph that additional evidence was needed. It provided a statement of accepted facts for his reviews and a list of questions regarding appellant's condition.

In an August 22, 2011 addendum, Dr. Randolph did not find any significant variation from the statement of accepted facts. He explained that the earliest audiogram present in appellant's record was dated March 15, 1977. It revealed normal hearing in the right ear and evidence of a high tone loss at 6,000 cycles per second in the left ear. Since 1977, appellant's hearing had degenerated in those frequencies affected by noise in both ears. Dr. Randolph utilized the A.M.A., *Guides* to find that appellant had no ratable hearing loss in either ear. He advised that appellant's workplace exposure was sufficient to aggravate his preexisting hearing loss, which was in excess of that normally associated with presbycusis. Dr. Randolph failed to find other significant contributing factors to appellant's hearing loss. He recommended bilateral fitting of appropriate hearing aids.

In a decision dated August 31, 2011, OWCP accepted appellant's claim for bilateral hearing loss due to noise exposure.

On September 9, 2011 appellant filed a Form CA-7 claim for a schedule award.

On January 26, 2012 an OWCP medical adviser reviewed Dr. Randolph's reports and the audiometric test of February 16, 2011 to determine if appellant's bilateral sensorineural hearing loss was ratable for schedule award purposes. Under the A.M.A., *Guides*, appellant had no permanent impairment due to his accepted hearing loss. The medical adviser determined that his hearing loss was not ratable for schedule award purposes after applying OWCP's current standards for evaluating hearing loss. He checked a box "yes" that hearing aids were authorized.

In a decision dated February 22, 2012, OWCP determined that appellant's hearing loss was employment related but not ratable for purposes of a schedule award. Appellant was advised that he was entitled to hearing aids based on his accepted hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA² 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

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.⁴ 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

² 5 U.S.C. §§ 8101-8193.

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

⁴ *See* A.M.A., *Guides* 250.

of this standard for evaluating hearing loss.⁵ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁶

ANALYSIS

Appellant's claim was accepted for bilateral hearing loss. He was examined by Dr. Randolph on February 16, 2011, who reviewed appellant's job history and noted his noise exposure at work. In an August 22, 2011 addendum report, Dr. Randolph reviewed the statement of accepted facts and appellant's medical records. He noted that the earliest audiogram from 1977 revealed right ear normal hearing with a high tone loss at 6,000 cycles per second in the left ear. Dr. Randolph found that appellant had no ratable hearing loss in both ears. He opined that appellant was subjected to workplace exposure during his employment in excess of that which would normally be predicted on the basis of presbycusis but the hearing loss was not severe enough to be ratable. An OWCP medical adviser concurred with this finding and agreed that appellant had no ratable hearing loss.

The Board finds that OWCP properly denied appellant's schedule award claim. In a January 26, 2012 report, the medical adviser reviewed the January 26, 2012 audiogram obtained for Dr. Randolph. Appellant's hearing thresholds were 15, 5, 0 and 35 for the right ear and 15, 15, 5 and 35 for the left ear. These total 55 and 70 decibels, respectively, for averages of 13.75 and 17.5 decibels. Because these averages are below the 25 decibels fence, appellant is found to have no impairment in his ability to hear everyday sounds under everyday listening conditions.⁷ This does not mean that he does not have a hearing loss. It means that the extent of loss is not sufficient to constitute a ratable impairment 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.

On appeal, appellant disagreed with the finding that he does not have a ratable hearing loss. He may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if medical evidence establishes an increased loss due to the accepted employment exposure.⁸ The current medical evidence of record does not establish that his hearing loss to either ear is ratable for schedule award purposes. For this reason, the Board finds that OWCP properly denied a schedule award for his nonratable hearing loss.

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.

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

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

⁷ See *G.M.*, Docket No. 11-1295 (issued January 25, 2012).

⁸ *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).

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he is entitled to a schedule award for his hearing loss.

ORDER

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

Issued: October 12, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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