

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

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**B.A., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
NATIONAL GUARD, Gulfport, MS, Employer**

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**Docket No. 12-1072  
Issued: October 12, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 30, 2012 appellant filed a timely appeal from a March 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a schedule award for an employment-related hearing loss. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a ratable hearing loss entitling him to a schedule award.

**FACTUAL HISTORY**

On December 13, 2011 appellant, then a 55-year-old aircraft mechanic supervisor, filed an occupational disease claim alleging that he developed hearing loss as a result of employment-

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

related noise exposure. He stated that he first became aware of and realized his condition resulted from his employment on June 30, 2005. Appellant alleged that he worked in a constant noise environment with aircraft operations and maintenance. He retired from federal service on November 30, 2011.

By letters dated December 19, 2011 and January 23, 2012, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location and whether he wore ear protection.

By letter dated January 5, 2012, appellant stated that he worked as an aircraft mechanic from December 1980 to 1987, as an aircraft systems supervisor from 1987 to 1994, as an electronics mechanic supervisor from 1994 to 2004 and as an aircraft mechanic supervisor from 2004 to 2011. He reported that he was exposed to noise from aircraft operating tools, power hand tools, aircraft structural repair tools and power sheet metal tools in all of his duty positions for approximately eight hours a day. Foam and earmuffs were provided. Appellant noted that he did not have a history of hearing problems and did not participate in any hobbies that could be related to hearing loss. He stated that it was apparent that his hearing loss could be attributed to his work environment.

Appellant submitted a noise exposure survey, audiograms dated June 5, 1983, March 15, 1994 and February 24, 2003, an executive summary of machines used at work and a medical examination report from the employing establishment dated June 3, 1984.

On February 1, 2012 Dr. Augustus E. Anderson, Jr., an OWCP medical adviser, reviewed appellant's medical record and noted that the initial audiogram dated June 5, 1983 showed normal bilateral hearing. The last audiogram conducted on February 24, 2003 revealed that appellant had developed moderate-to-severe bilateral high-frequency hearing loss.

On February 1, 2012 the employing establishment responded to OWCP's development letter. It noted that appellant's last day of exposure was on November 30, 2011 and indicated his periods of leave without pay (LWOP) for military duty and various pay rates. The employing establishment included copies of appellant's medication examinations and personnel records and a position description.

By letter dated February 6, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. John S. Keebler, a Board-certified otolaryngologist, for a second opinion as to whether he sustained hearing loss causally related to his federal employment.

In a March 13, 2012 medical report, Dr. Keebler reported normal examination findings and noted that appellant rode a motorcycle for many years. He diagnosed high-frequency bilateral severe sensorineural hearing loss and opined that the hearing loss was a result of

appellant's history of noise exposure in his federal employment. An audiogram conducted on March 13, 2012 reflected testing at 500, 1,000, 2,000 and 3,000 Hertz (Hz) and showed the following decibel losses: 5, 10, 0 and 70 in the right ear and 10, 5, 5 and 30 in the left ear. Dr. Keebler explained that the severe hearing loss centered around 4,000 Hz. He opined that hearing aids could be considered to protect appellant's ears.

On March 22, 2012 Dr. Anderson reviewed Dr. Keebler's findings and determined that appellant had no ratable hearing loss. He did not authorize hearing aids.

By letter dated March 26, 2012, OWCP accepted appellant's claim for bilateral sensorineural hearing loss but determined that his hearing loss was not severe enough to be considered ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (A.M.A., *Guides*).

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> 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* (sixth edition 2009) has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</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 Hz, 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.<sup>4</sup> 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 of this standard for evaluating hearing loss.<sup>5</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *See* A.M.A., *Guides* 250.

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

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

## ANALYSIS

The Board finds that OWCP properly denied appellant's claim because the evidence of record does not establish that he sustained a ratable hearing loss.

OWCP referred appellant's claim to Dr. Keebler for a second opinion examination. In a March 13, 2012 medical report, Dr. Keebler reported normal examination findings and diagnosed high-frequency bilateral severe sensorineural hearing loss as a result of appellant's history of noise exposure in his federal employment. OWCP's medical adviser concurred with Dr. Keebler's findings and concluded that appellant had no ratable hearing loss to warrant a schedule award according to the A.M.A., *Guides*. Hearing aids were not authorized. OWCP accepted appellant's claim for bilateral hearing loss but denied his schedule award claim based on the medical adviser's report.

The Board finds that OWCP's medical adviser correctly applied the proper procedures to determine that appellant did not sustain a ratable hearing loss. An audiogram conducted on March 13, 2012 reflected testing at 500, 1,000, 2,000 and 3,000 Hz and showed the following decibel losses: 5, 10, 0 and 70 in the right ear and 10, 5, 5 and 30 in the left ear. These thresholds total 85 and 50 decibels, respectively, for averages of 21.25 and 12.5 decibels. Because these averages are below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.<sup>7</sup> This does not mean that appellant has no hearing loss, but only shows that the extent or degree of his hearing loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. Thus, the Board finds that OWCP's medical adviser properly determined that appellant had no ratable hearing loss and that OWCP properly denied appellant's claim for schedule award.<sup>8</sup>

On appeal, appellant contends that he is entitled to a schedule award because he sustained substantial hearing loss as a result of working around noisy aviation equipment. While OWCP accepted that appellant sustained sensorineural hearing loss due to noise exposure from his federal employment, the medical evidence establishes that appellant did not sustain a ratable impairment according to the A.M.A., *Guides*. The A.M.A., *Guides* provides the formula for computing the percentage of employment-related hearing loss and there is no provision for granting a schedule award when the average of appellant's hearing threshold falls below the fence of 25 decibels.

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.

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<sup>7</sup> See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

<sup>8</sup> While the March 26, 2012 decision also denied authorization of hearing aids, the record does not indicate that appellant has requested such authorization.

**CONCLUSION**

The Board finds that appellant has not established a ratable hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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