

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

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G.M., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
RANDOLPH AIR FORCE BASE, TX, Employer )

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**Docket No. 13-77**  
**Issued: April 5, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 12, 2012 appellant filed a timely appeal from an August 27, 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(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 sustained a ratable hearing loss in his left ear warranting a schedule award.

**FACTUAL HISTORY**

On February 23, 2012 appellant, then a 62-year-old sheet metal mechanic and inspector, filed an occupational disease claim alleging hearing loss as a result of noise exposure from federal employment. Since September 1988, he worked in a noise hazard area and was exposed

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

to noise from rivet hammers, age equipment, pneumatic drills and jet engines. Appellant first notified his supervisor on February 23, 2012.

By letter dated March 2, 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, whether he wore ear protection and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

In a March 9, 2012 narrative statement, appellant reported that his hearing loss began on May 5, 1991 and that he was still exposed to the employment-related noise. He first related his hearing loss to his employment on February 17, 2012, noting that he had ringing in his ears and found it hard to follow normal conversations. Appellant worked as a sheet metal mechanic from September 1988 to November 2007 and as an inspector from November 2007 to the present. He noted noise exposure to rivet hammers, age equipment, pneumatic drills, screw removal tools and jet engines for eight hours a day. Appellant stated that earplugs and hard shell earmuffs were provided for his employment and that he had no prior hearing problems.

Hearing conservation data and audiograms were submitted for the period September 7, 1988 to May 19, 2011. An official position description for a sheet metal mechanic was also submitted. Noise dosimeter survey reports were submitted dated March 2, 1994 to September 12, 2005 documenting the decibel (dBA) levels of appellant's employment-related noise exposure, which ranged from 68 dBA to 118 dBA.

In a July 19, 2012 statement of accepted facts, OWCP listed that appellant worked as a sheet metal mechanic from September 1988 to November 2007 and as an inspector commencing November 2007. Appellant was exposed to employment-related noise from rivet hammers, aerospace ground equipment, pneumatic drills, screw removal tools and jet engines for eight hours a day. He was still exposed to the employment-related noise and was provided ear protection since September 1988.

On July 10, 2012 OWCP referred appellant to Dr. Kenneth Walker, a Board-certified otolaryngologist, for a second opinion evaluation. It provided a statement of accepted facts addressing appellant's federal work duties as a sheet metal mechanic and the types of employment-related noise to which he had been exposed. Dr. Walker reported that appellant had normal hearing across most of the frequency range at the beginning of his federal employment noise exposure with a mild loss at 4,000 hertz (Hz) in the left ear. He noted a history of hypertension and diabetes with no known ototoxic medication or ear surgery. An audiogram was completed on July 10, 2012 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 25, 25 and 25 for the right ear and 25, 20, 25 and 25 for the left ear. Speech discrimination thresholds were 25 dBA bilaterally and auditory discrimination scores were 100 percent bilaterally. Dr. Walker noted a flat sensorineural hearing loss in the right ear and noise-induced hearing loss in the left ear. He diagnosed high frequency sensorineural

noise-induced hearing loss in the left ear, which was due to appellant's federal civilian employment and was in excess of what would normally be predicated on the basis of presbycusis. Dr. Walker also diagnosed tinnitus and stated that appellant's workplace exposure as a sheet metal mechanic was sufficient as to intensity and duration to have caused his left ear hearing loss. He recommended ear protection and annual hearing evaluations.

On July 27, 2012 appellant filed a claim for a schedule award.

OWCP referred the case record to a district medical adviser (DMA) to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement.

In an August 3, 2012 report, Dr. A.E. Anderson, Jr., a medical adviser, reported that appellant suffered from slight hearing loss in the right ear and a moderate high frequency hearing loss in the left ear. He agreed with Dr. Walker that the left ear hearing loss was work related. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in the left ear.<sup>2</sup> Dr. Anderson did not calculate the percentage of appellant's right ear hearing loss as it was determined to be nonwork related. The medical adviser did not recommend hearing aids and noted the date of maximum medical improvement as July 10, 2012, the date of appellant's audiology testing.

By decision dated August 27, 2012, OWCP accepted appellant's claim for monaural left ear sensorineural hearing loss.

In a second decision dated August 27, 2012, OWCP found that appellant's left ear hearing loss was not severe enough to be considered ratable and denied his schedule award claim.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</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 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* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>4</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

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<sup>2</sup> A.M.A., *Guides* (2009).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

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>5</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>6</sup>

Regarding tinnitus, the A.M.A., *Guides* provide that it is not a disease but rather a symptom that may be the result of a disease or injury.<sup>7</sup> The A.M.A., *Guides* state that if tinnitus interferes with Activities of Daily Living (ADLs), including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>8</sup>

### ANALYSIS

Appellant filed a claim for hearing loss and was referred to Dr. Walker for a second opinion examination. Dr. Walker reviewed the statement of accepted facts and medical file, conducted a thorough physical evaluation and obtained an audiogram on July 10, 2012. He diagnosed high frequency sensorineural noise-induced hearing loss in the left ear. The medical adviser concurred with Dr. Walker that appellant's left ear hearing loss was employment related but the extent of loss was not ratable hearing loss to warrant a schedule award or hearing aids. By decision dated August 27, 2012, OWCP accepted his claim for left ear hearing loss but denied a schedule award.

The Board finds that OWCP properly denied appellant's schedule award claim. According to the audiometry obtained on July 10, 2012, appellant's hearing thresholds were 20, 25, 25 and 25 on the right and 25, 20, 25 and 25 on the left. Dr. Walker noted that appellant's left ear hearing loss was due to noise exposure at work while right ear audiometry revealed a nonwork-related flat sensorineural hearing loss. The left ear hearing thresholds of 25, 20, 25 and 25 total 95 decibels for an average of 23.75 decibels. Because this average is 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>9</sup> This does not mean that he has no hearing loss; rather, the extent or degree of loss is not sufficient to show a practical impairment in his hearing under the A.M.A., *Guides*, which set a threshold for impairment. Appellant's occupational hearing loss

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<sup>5</sup> See A.M.A., *Guides* 250.

<sup>6</sup> See *E.S.*, 59 ECAB 249 (2007); *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>7</sup> See A.M.A., *Guides* 249.

<sup>8</sup> *Id. R.H.*, Docket No. 10-2139 (issued July 13, 2011); see also *Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>9</sup> See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

did not cross that threshold and is not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for his left ear hearing loss.

The Board further finds that OWCP properly denied a schedule award for tinnitus.<sup>10</sup> On appeal, appellant argues that left ear tinnitus was not considered when denying his schedule award claim. FECA does not list tinnitus in the schedule of eligible members, organs or functions of the body. Therefore, no claimant may directly receive a schedule award for tinnitus. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with ADLs, up to five percent may be added to a measurable binaural hearing impairment.<sup>11</sup> The Board has repeatedly held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.<sup>12</sup> Although Dr. Walker's June 10, 2012 report diagnosed tinnitus, as appellant's hearing loss is not ratable, the Board will affirm OWCP's August 27, 2012 decision finding that he was not entitled to a schedule award.

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 not established a left ear ratable loss of hearing such that he is entitled to a schedule award.

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

<sup>11</sup> *Supra* note 7.

<sup>12</sup> *See Richard Larry Enders*, 48 ECAB 184 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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