

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

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T.O., Appellant)	
)	
and)	
)	Docket No. 13-186
)	Issued: April 2, 2013
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal from a September 5, 2012 decision of the Office of Workers' Compensation Programs (OWCP). 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 the decision.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has a ratable impairment caused by the accepted bilateral noise-induced hearing loss that would entitle him to a schedule award.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 18, 2011 appellant, then a 68-year-old retired shipfitter general foreman, filed an occupational disease claim alleging that noise exposure at work caused hearing loss. He stated that he first became aware of the illness and its relationship to employment on January 1, 1985. The employing establishment indicated that appellant retired on October 18, 1991.

The employing establishment submitted a May 24, 2011 report in which Dr. Gerald G. Randolph, a Board-certified otolaryngologist, noted a history of progressive hearing loss for approximately 30 years with tinnitus in both ears for many years. The physician reported appellant's employment history, medical history and physical examination findings. He diagnosed sensorineural hearing loss bilateral, compatible with past noise exposure. An audiogram, performed on May 18, 2011 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 15, 15, 20 and 55 decibels; left ear 20, 20, 25 and 75 decibels, respectively. Dr. Randolph advised that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),² appellant had a 1.875 percent hearing loss in his right ear and a 15 percent loss on the left, with a binaural loss of 4.06 percent.³

In letters dated June 28, 2011, OWCP informed appellant of the type of evidence needed to support his claim and asked that the employing establishment provide information about his employment, including noise exposure and hearing conservation measures.

On July 5, 2011 appellant stated that he began work at the employing establishment when he was 18 and did not use hearing protection prior to 1978. He noted that he was in a hearing conservation program and first noticed his hearing loss on January 1, 1985 when he had a hearing test at work.

The employing establishment reported that appellant was exposed to noise at work and provided a description of his employment from 1961 to 1991. The agency also forwarded a position description, a medical chart review, and records of audiograms dated from January 25, 1961 to February 13, 1991. The February 13, 1991 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 5, 10, 10 and 30 decibels; left ear 5, 10, 5 and 60 decibels, respectively.

On September 7, 2011 OWCP provided Dr. Randolph a statement of accepted facts, the medical record, and OWCP hearing loss medical requirements. In a September 29, 2011 report, the physician indicated that the earliest audiogram present in appellant's record was dated January 25, 1961 and revealed entirely normal hearing in both years, and that his last industrial audiogram, dated February 13, 1991, revealed a bilateral high frequency sensorineural hearing loss compatible with hearing loss due to past noise exposure with some influence of the aging process. He advised that, in accordance with the A.M.A., *Guides*, the 1991 audiogram revealed a hearing loss of zero percent in both ears. Dr. Randolph concluded that the increase in appellant's

² A.M.A., *Guides* (6th ed. 2008).

³ Appellant also submitted an April 26, 2011 audiogram from a hearing aid clinic that is partially illegible.

hearing loss since 1991 was not due to work noise exposure, indicating that hearing loss due to noise exposure occurs at the time of the noise exposure and does not get worse at a later date because of past noise exposure. The physician attached a verification of audiometric testing dated May 18, 2011.

In a December 20, 2011 report, OWCP reviewed Dr. Randolph's reports and the audiogram dated February 13, 1991. Dr. Randolph advised that the date of maximum medical improvement was February 13, 1991 and calculated appellant's impairment in accordance with the sixth edition of the A.M.A., *Guides*⁴ and current OWCP standards. OWCP's medical adviser concluded that appellant's bilateral hearing loss was not severe enough to be ratable. He checked a box "yes" regarding whether hearing aids should be authorized.

In a September 5, 2012 decision, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable and that he would be entitled to medical benefits for the condition, including hearing aids.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing federal regulations⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition is to be used.⁹

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 and averaged.¹⁰ The "fence" of 25 decibels is then 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.¹¹ The remaining amount is

⁴ *Supra* note 2.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ A.M.A., *Guides*, *supra* note 2 at 250.

¹¹ *Id.*

multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹² 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.¹³ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁴

ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award based on his accepted bilateral hearing loss because the February 13, 1991 audiogram results did not demonstrate ratable values.

Dr. Randolph, an attending otolaryngologist, provided reports dated May 24 and September 29, 2011. He advised that, while appellant had employment-related noise-induced bilateral hearing loss, any loss after the date of last exposure, or October 18, 1991 when appellant retired, was not due to noise exposure in his federal employment because hearing loss due to noise exposure occurs at the time of the exposure and does not get worse at a later date, due to past noise exposure. OWCP therefore properly utilized the February 13, 1991 audiogram as it was completed six months prior to appellant's retirement and was most contemporaneous with the end of his workplace noise exposure.¹⁵

The February 13, 1991 audiogram demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second of 5, 10, 10 and 30 decibels on the right for a total of 55 decibels. This figure, when divided by 4, results in an average hearing loss of 13.75 decibels. The average of 13.75 decibels, when reduced by the 25 decibel fence, results in a 0 percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 10, 5 and 60, for a total of 80 decibels. This figure, when divided by 4, results in an average hearing loss of 20 decibels, which when reduced by 25 decibels, also results in a zero percent monaural hearing loss of the left ear. The Board thus finds that, as the February 13, 1991 audiogram did not demonstrate that appellant's hearing loss was ratable, he was not entitled to a schedule award for his accepted hearing loss condition.

Appellant may request a 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.

¹² *Id.*

¹³ *Id.* at 251.

¹⁴ *Horace L. Fuller*, 53 ECAB 775 (2002).

¹⁵ The record does not contain any audiograms performed between the February 13, 1991 study and those done in 2011.

CONCLUSION

The Board finds that appellant did not establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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