United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 13-498**
	)	**Issued: April 16, 2013**
DEPARTMENT OF THE ARMY,	)	
Fort Stewart, GA, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 24, 2012 appellant filed a timely appeal from a December 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a ratable employment-related hearing loss that would entitle him to a schedule award; and (2) whether OWCP properly exercised its discretion in denying hearing aids.

FACTUAL HISTORY

On August 29, 2012 appellant, then a 62-year-old insulator supervisor, filed an occupational disease claim alleging that he developed bilateral hearing loss as a result of

[1] 5 U.S.C. § 8101 *et seq.*

exposure to noisy equipment such as trenchers, trucks, tile remover equipment, excavators and other heavy equipment in the performance of duty. He first became aware of his hearing loss and of its relationship to his employment on September 26, 2011. Appellant notified his supervisor on August 29, 2012.

By letter dated September 7, 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.

On September 12, 2012 appellant completed OWCP's hearing loss questionnaire. He checked "yes" that he was exposed to severe noise in the military and that he was also exposed to noise through duck hunting. Appellant provided his employment history. From 1968 to 1970 he was in the military and was exposed to noise from explosions, aircraft engines and generators. From May 1970 to November 1981 appellant worked in the private sector as a food distributor, lineman and truck driver. As a lineman, he was exposed to noise from line and bucket trucks, chainsaws and generators and did not use hearing protection. From November 1981 to 1996 appellant worked for the employing establishment as an electrician for 40 hours a week. He was exposed to noise from line and bucket trucks, chain saws and generators and did not use hearing protection. From 1996 to September 2012 appellant worked for the employing establishment as a maintenance branch chief and insulator supervisor for 40 hours a week. He was exposed to noise from heavy equipment, big pumps, vacuums, trucks, track and back hoes, plumbing equipment, diesel generators and saws. Appellant wore hearing protection. In a September 20, 2012 telephone conference, OWCP verified the information appellant provided in support of his hearing loss with the employing establishment.

In handwritten health records dated from August 8, 1990 to July 1, 1993, Linda S. Smith, an occupational therapist, noted that appellant worked as an electric shop foreman and was exposed to hazardous noise.

Appellant provided employment audiogram records beginning December 1983. A September 28, 2011 audiogram revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 10, 5, 20 and 55 for the left ear and 15, 10, 25 and 40 for the right ear.

Appellant retired from federal service effective September 30, 2012.

OWCP referred appellant, along with a statement of accepted facts, to Dr. Thomas Crews, a Board-certified otolaryngologist, for a second-opinion evaluation. In a November 5, 2012 report, he reviewed the statement of accepted facts and addressed appellant's federal work duties and the types of employment-related noise exposure he experienced. Dr. Crews noted that appellant had no history of vertigo, ear operations, ear pain or chronic ear infections. Upon examination, he observed clear external canal, drum and middle ear. An audiogram completed

that day revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 10, 25, and 45 dBA for the right ear and 15, 10, 20 and 55 dBA for the left ear. Dr. Crews reported that the hearing test showed bilateral symmetrical moderately severe high-frequency sensorineural hearing loss worse at 4,000 Hz, which was indicative of noise-induced hearing loss. He opined that in the absence of any mitigating factors, appellant has had a progressive hearing loss since 1983. Dr. Crews explained that in light of appellant's long history of federal employment with exposure to loud noise and the fact that he had relatively normal hearing in 1983, it was his opinion that appellant had moderate-to-severe high-frequency bilateral sensorineural hearing loss secondary to his federal civilian employment. He recommended annual hearing tests, participation in a hearing conservation program and a trial of binaural amplification.

OWCP referred the case file along with Dr. Crews' report to a district medical adviser to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement (MMI).

In a December 12, 2012 report, the medical adviser determined that, 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 bilateral sensorinueral hearing loss. He did not authorize hearing aids. The date of maximum medical improvement was noted as November 5, 2012, the date of appellant's last audiology testing.

In a decision dated December 14, 2012, OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to employment-related noise exposure. It further found that appellant's hearing loss was not severe enough to be considered ratable and thus, was entitled to a zero percent schedule award. Hearing aids were not authorized.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA[2] 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 a 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

[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.

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 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 -- ISSUE 1

Appellant filed a claim for hearing loss and was referred to Dr. Crews for a second opinion examination. In a November 5, 2012 second opinion report, Dr. Crews diagnosed bilateral sensorinueral hearing loss as a result of his employment. After reviewing Dr. Crews' second opinion report and a November 5, 2012 audiogram, an OWCP medical adviser applied OWCP's standardized procedures to the results. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses at 20, 10, 25 and 45 for the right ear and 15, 10, 20 and 55 for the left ear. The total decibel loss was 100 for both ears, which resulted in an average of 25 dBA. Because this average is not above the fence of 25 dBA, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.[7] This does not mean that he has no hearing loss. Rather, the extent of degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides.* The A.M.A., *Guides* set a threshold for impairment and appellant's employment-related hearing loss did not reach that threshold.

The Board finds that OWCP properly accepted appellant's claim for binaural hearing loss and properly determined that the hearing loss was not severe enough to be considered ratable. Accordingly, appellant was not entitled to a schedule award.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduces the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[8] OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.[9]

[4] *See* A.M.A., *Guides* 250.

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

[6] *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).

[7] *See L.F.*, Docket No. 10-2115 (issued June 3, 2011).

[8] 5 U.S.C. § 8103 (a); *see Joshua A. Holmes*, 42 ECAB 231 (1990).

[9] *Id.*

Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.[10]

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion by denying authorization of hearing aids. While Dr. Crews noted in his November 5, 2012 report that appellant might benefit from a trial of binaural amplification, he did not explicitly state that appellant required hearing aids. Based upon the evidence of record, the medical adviser reported on December 12, 2012 that hearing aids should not be currently authorized. There is no medical evidence from a physician stating that he should be provided with hearing aids or any other medical treatment for his employment-related hearing loss. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a ratable loss of hearing such that he is entitled to a schedule award. The Board also finds that OWCP did not abuse its discretion by denying authorization for hearing aids.

[10] *See F.D.*, Docket No. 10-1175 (issued January 4, 2011); *R.R.*, Docket No. 12-1840 (issued February 14, 2013).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2012 schedule award decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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