United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 13-875**
	)	**Issued: August 15, 2013**
DEPARTMENT OF THE NAVY, Keyport, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2013 appellant filed a timely appeal from a February 6, 2013 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.

ISSUE

The issue is whether appellant sustained more than a four percent hearing loss in the left ear, for which he received a schedule award.

FACTUAL HISTORY

On February 29, 2012 appellant, then a 50-year-old retired engineering technician, filed an occupational disease claim alleging hearing loss as a result of exposure to loud noise in his federal employment. He first related his condition to his work on March 1, 2006.

[1] 5 U.S.C. § 8101 *et seq.*

In support of his claim, appellant submitted a February 29, 2012 report from Dr. Gerald G. Randolph, a Board-certified otolaryngologist, who noted appellant's occupational history as an ordinance equipment mechanic at the employing establishment from 1982 until his retirement in 2006. Dr. Randolph related that appellant had undergone audiometric evaluation with Dr. Amy Becken, an audiologist. The audiogram revealed hearing loss in the higher frequencies with an audiometric configuration compatible with hearing loss due to noise exposure, while the conductive component to appellant's hearing loss in the lower frequencies was not due to industrial causes. Dr. Randolph determined that appellant had a 39 percent hearing loss in the right ear, 15 percent hearing loss in the left, or a binaural hearing loss at 19 percent. He diagnosed appellant with bilateral mixed-type hearing loss.

OWCP received a series of employing establishment audiograms dated from 1986 to 2003. A March 17, 2003 employing establishment audiogram revealed findings for the right ear of 15, 15, 0 and 70 decibels at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hertz (Hz), and for the left ear, 10, 10, 15 and 75 decibels.

OWCP prepared an August 3, 2012 statement of accepted facts which related that appellant was exposed to loud noise from 1980 to 2006 at the employing establishment due to noise from grinders, ventilation fans, ovens, sandblasters, test equipment, cranes, air hoists, electric hoists, air hoses and forklifts.

On August 3, 2012 OWCP requested a supplemental opinion from Dr. Randolph as to whether appellant's industrial noise exposure caused, aggravated or accelerated his hearing loss.

In an August 27, 2012 addendum report, Dr. Randolph related that the earliest audiogram present in the record was dated March 27, 1980. It revealed a very significant bilateral high tone sensorineural hearing loss compatible with noise exposure preceding his employment; however, the degree of hearing loss was zero percent. Responding to the question as to whether appellant's current hearing loss exceeded what would be normally predicted on the basis of presbycusis, Dr. Randolph responded that appellant left his employment in 2006, and audiograms were not of record performed at or near the time he left his employment. The most recent audiogram of record was dated March 17, 2003, which showed hearing loss had increased in severity at 3,000 cycles, suggesting that the hearing loss had been aggravated by noise exposure since March 1980. The hearing loss was in excess of what would normally be predicated on the basis of presbycusis. Between 2003 and the February 29, 2012 audiogram, appellant developed a bilateral mixed-type hearing loss with a conductive component not due to industrial noise exposure. Subtracting the conductive component of appellant's hearing loss, he had a sensorineural component to his hearing loss ratable at 18.75 percent in the right ear, 11.25 percent in the left ear, with a binaural hearing loss ratable at 12.5 percent, potentially due to past industrial noise exposure. Dr. Randolph concluded that the hearing loss was far in excess of what would normally be predicted on the basis of presbycusis. Appellant had evidence of eustachian tube dysfunction on tympanogram in the left ear suggesting that tymphanic membrane motility was not entirely normal on the left side. There was no indication of any medical condition such as acoustic neuroma or Meniere's disease. The high tone component to appellant's hearing loss had an audiometric configuration compatible with significant past noise exposure.

OWCP forwarded appellant's case to the district medical adviser for assessment of the percentage of permanent hearing loss. In a September 13, 2012 report, he stated that the

audiogram that best represented work-related exposure to noise prior to appellant's 2006 retirement was the March 17, 2003 audiogram. It showed a pattern of high tone sensorineural hearing loss consistent with hearing loss due to workplace noise exposure. The February 29, 2012 audiogram showed a very substantial decline in hearing since 2003 with a new pattern of bilateral mixed-type hearing loss with a conductive component in both ears, which was not due to industrial noise exposure. Relying on the March 17, 2003 audiogram, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), the district medical adviser determined that appellant had a four percent monaural hearing loss to the left ear and that the date of maximum medical improvement was March 17, 2003.

In its September 25, 2012 decision, OWCP accepted appellant's claim of bilateral noise-induced hearing loss.

In its February 6, 2013 decision, OWCP granted appellant a schedule award for four percent hearing loss in the left ear which covered 2.08 weeks from October 5 to 19, 2006.

LEGAL PRECEDENT

The schedule award provision of FECA[2] provides compensation to employees sustaining permanent loss or loss of use, of specified members 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 a determination is a matter which results 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* 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*.[4] Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.[5] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[6] 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.[7] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[8]

[2] 5 U.S.C. §§ 8101-8193.

[3] *See* 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

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

[5] *Id*.

[6] *Id.*

[7] *Id.*

[8] *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[9]

ANALYSIS

The Board finds that the case is not in posture for decision.

The evidence supports that appellant sustained hearing loss and was routinely exposed to loud noise at the workplace generated by industrial equipment and machinery from 1980 until his retirement in 2006. OWCP has therefore properly accepted appellant's claim for bilateral hearing loss.

The case is not in posture for decision as to the degree of hearing loss causally related to appellant's employment. The Board finds that a conflict exists in the medical opinion evidence as to whether appellant has greater than a four percent hearing loss in his left ear, causally related to his federal employment.

In his August 27, 2012 report, Dr. Randolph, appellant's treating physician, stated that the March 17, 2003 audiogram revealed a significant bilateral hearing loss. He remarked that while the conductive component of appellant's hearing loss was not due to industrial noise exposure, the hearing loss was far in excess of which would normally be predicted on the basis of presbycusis. Dr. Randolph concluded that the workplace exposure was of sufficient intensity and duration to have aggravated appellant's preexisting sensorineural hearing loss, to cause an 18.75 percent loss in the right ear and an 11.25 percent loss in the left ear.

The district medical adviser noted in his September 13, 2012 report that the February 29, 2012 audiogram revealed a sudden decline in hearing since 2003, not all of which was due to industrial noise exposure. He then relied on the March 17, 2003 audiogram to calculate appellant's employment-related hearing loss as four percent hearing loss of the left ear.

Appellant did not stop working until 2006 and continued to be exposed to industrial noise after the March 17, 2003 audiogram. Dr. Randolph opined that his hearing continued to deteriorate due to his previous employment exposure. Therefore, he used the 2012 audiogram to rate appellant's hearing loss. The Board has held that it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship.[10] The Board explained in *Adelbert E. Buzzell*,[11] that OWCP's medical adviser was under the mistaken belief that in *Kenneth W. Morgan*,[12] the Board held that a noise-induced sensorineural hearing loss does not progress after exposure to hazardous occupational noise ceases. In *Morgan*, the Board did not enunciate a general rule or policy statement.[13] The Board

[9] 5 U.S.C. § 8123(a); *see also Charles E. Burke*, 47 ECAB 185 (1985).

[10] *See Kathleen M. Fava*, 49 ECAB 519 (1998); *Beth P. Chaput*, 37 ECAB 158 (1985).

[11] 34 ECAB 96 (1982).

[12] 28 ECAB 569 (1977).

[13] *See H.H.*, Docket No. 11-938 (issued December 23, 2011).

has emphasized that it does not take positions on medical questions of general application, but instead relied upon the medical evidence submitted in each case.[14]

The Board finds that a conflict exists in the medical opinion evidence as to whether appellant's employment-related hearing loss progressed after 2003. The Board will remand the case for referral to an impartial medical specialist for resolution of the conflict in the medical opinion evidence. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant sustained greater than four percent hearing loss in the left ear.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 15, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

[14] *Id*.