

FACTUAL HISTORY

On August 29, 2011 appellant, then a 60-year-old crane operator, filed an occupational disease claim alleging binaural hearing loss as a result of exposure to noise over 24 years. He first became aware of his condition on January 1, 1988 and realized that it resulted from his employment on January 1, 1989.

In a letter dated August 31, 2011, OWCP advised appellant that no evidence was received to establish his claim. It requested additional factual and medical information in support of the claim.

In an August 23, 2011 statement, appellant provided his employment history. From 1967 to 1970, he was a helicopter crew chief in the U.S. Army; from 1971 to 1988 he was a crane and equipment operator for various private employers; from 1988 to the present he worked as a crane operator at the employing establishment. Appellant reported that he was exposed to noise from power house generators, crane diesel engines, electrical breakers, high pressure air, large volumes of water, high pitched bearing noise, boat engines, buzzers, bells, whistles, helicopters, heavy trucks and other noises associated with hydroelectric dams. He utilized earplugs. Appellant submitted audiograms dated from October 3, 1988 to November 5, 2009 which showed varying degrees of hearing loss and noise level assessment reports.

In a February 14, 2011 statement, James R. Borley, the structural crew supervisor, agreed with appellant's statement regarding the location and level of noise exposure at work. He was not aware of any previous hearing problems. Mr. Borley stated that appellant was still employed as a crane operator on his crew.

On November 28, 2011 OWCP referred appellant, together with a statement of accepted facts, to Dr. Jeffrey Davis, a Board-certified otolaryngologist, for a second opinion evaluation. In a December 27, 2011 report, Dr. Davis reviewed appellant's history of treatment, the statement of accepted facts, and noted the exposure to workplace noise. He conducted an examination and diagnosed bilateral sloping sensorineural hearing loss due to noise exposure at work. An audiogram conducted that day revealed losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz) of 15, 15, 25 and 45 decibels (dB) for the right ear and 15, 15, 20 and 40 for the left ear. Dr. Davis reported that appellant was at maximum medical improvement and recommended hearing aids.

By decision dated January 26, 2012, OWCP accepted appellant's claim for binaural hearing loss.

OWCP forwarded the record to a district medical adviser to determine the extent of any permanent hearing loss in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² In a February 7, 2012 report, OWCP's medical adviser reviewed the December 27, 2011 report and audiometric testing from Dr. Davis to determine that appellant's binaural hearing loss was not severe enough to be ratable according to OWCP's current standards for evaluating hearing

² A.M.A., *Guides* (6th ed. 2009).

loss. He determined that appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser noted that appellant reached maximum medical improvement on December 27, 2011.

In a decision dated February 10, 2012, OWCP determined that appellant was not entitled to a schedule award because he did not have a ratable hearing loss.³

On June 4, 2012 appellant, through counsel, requested reconsideration. He submitted an April 9, 2012 audiogram, which revealed losses at 500, 1,000, 2,000 and 3,000 Hz of 10, 20, 25 and 45 dB for the right ear, respectively, and 10, 15, 25 and 40 for the left ear. In an April 11, 2012 hearing loss and disability form, the audiologist stated that appellant sustained moderate-to-severe sensorineural hearing loss bilaterally due to continual exposure to hazardous noise.

By decision dated June 18, 2012, OWCP denied modification of the February 10, 2012 decision denying a schedule award. It noted that because appellant continued working at the employing establishment with additional noise exposure, it would be more appropriate for him to file a new schedule award claim based on the new exposure.

On June 29, 2012 counsel submitted a request for reconsideration. In a June 21, 2012 statement, he stated that the June 18, 2012 decision was in error because it was based on inaccurate information. Counsel noted that appellant retired from federal service effective December 31, 2011 and had been off work 30 days before his retirement date, thus, he did not experience any new exposure.

In a decision dated February 6, 2013, OWCP modified the June 18, 2012 decision to find that appellant did not have new exposure to noise. It denied appellant's schedule award claim finding that the medical evidence failed to establish a ratable hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.⁵

³ This decision also noted that if appellant would like to have hearing aids, he should seek further evaluation by an audiologist to determine his specific needs.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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 dB is deducted because, as the A.M.A., *Guides* points out, losses below 25 dB result in no impairment in the ability to hear everyday speech under everyday conditions.⁷ 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.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure in his federal employment. The issue is whether he sustained a ratable hearing loss in accordance with the A.M.A., *Guides*, entitling him to a schedule award.

OWCP properly referred appellant to Dr. Davis for a second-opinion evaluation regarding his hearing loss. In a December 27, 2011 report, Dr. Davis conducted an otologic examination and reviewed appellant's audiological evaluation. He found that appellant sustained a bilateral sloping sensorineural hearing loss due to noise exposure at work. In a February 7, 2012 report, OWCP's medical adviser reviewed Dr. Davis's report and agreed that appellant's hearing loss resulted from his employment. He applied OWCP's standardized procedures to the December 27, 2011 audiogram performed for Dr. Davis to determine if appellant's hearing loss was ratable. Testing for the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dB losses of 15, 15, 25 and 45. These dB were totaled at 100 and were divided by 4 to obtain an average hearing loss at those Hz of 25 dB. The average of 25 dB was then reduced by the fence of 25 dB to equal zero percent hearing loss for the right ear.¹⁰ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dB losses of 15, 15, 20, and 40 respectively. These dB were totaled at 95 and were divided by 4 to obtain the average hearing loss at those Hz of 22.5 dB. The average of 22.5 dB was reduced by the fence of 25 dB to equal zero percent hearing loss for the left ear. Based on this test, the medical adviser determined that appellant did not sustain a ratable hearing loss.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to Dr. Davis's report and the December 27, 2011 audiogram. Dr. Davis provided a thorough examination and the medical adviser provided a reasoned opinion explaining how the findings on

⁶ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

⁷ *See A.M.A., Guides* 250 (6th ed. 2009).

⁸ *Id.*

⁹ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁰ The fence of 25 dB is deducted as the A.M.A., *Guides* note that losses below 25 dB result in no impairment in the ability to hear speech in everyday conditions. *See Stuart M. Cole*, 46 ECAB 1011 (1995).

examination and testing resulted in a zero percent monaural hearing loss and a zero percent binaural hearing loss as set forth above. Although the record contains one other audiogram submitted by appellant, this does not establish a ratable hearing loss. The April 9, 2012 audiogram is of no probative value as it was not certified by a physician as accurate.¹¹ Further, appellant would not otherwise be ratable for schedule award purposes as it shows lesser hearing loss at the pertinent frequency levels than did the audiogram performed for Dr. Davis. The Board finds that because his hearing loss is not ratable under the standards used by OWCP, he is 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 OWCP properly denied appellant's claim for a schedule award for hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 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

¹¹ *M.H.*, Docket No. 13-135 (issued May 2, 2013); *James A. England*, 47 ECAB 115 (1995).