

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

K.M., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 13-1124
Issued: August 13, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 9, 2013 appellant filed a timely appeal from a March 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. 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 this case.

ISSUE

The issue is whether appellant established an employment-related binaural hearing loss entitling him to a schedule award.

On appeal, appellant asserts that the physicians of record supported a diagnosis of bilateral tinnitus. He contended that OWCP's medical adviser was confused about how to rate tinnitus as he combined the condition with a denied schedule award claim for bilateral hearing loss. Appellant argued that the "theory that tinnitus must contribute to a ratable hearing loss to be considered is not a true statement."

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2011 appellant, then a 59-year-old pneumatic systems mechanic leader, filed an occupational disease claim (Form CA-2) that he sustained a bilateral hearing loss with the recent onset of tinnitus due to hazardous noise exposure at work beginning in 1983.² He remained exposed to high noise levels through September 2011. Appellant submitted an employment history and job descriptions documenting exposure to engine and tool noise while a mechanic in private-sector employment from 1966 through 1981. An employing establishment industrial hygiene noise exposure summary showed that, from September 1983 through 2011, he was exposed to noise levels between 75 and 95 decibels (dB) while working with pneumatic tools and hydraulic equipment.

In a June 23, 2011 report, Dr. Robert H. Hurlbutt, an attending Board-certified otolaryngologist, reviewed annual employing establishment audiograms from September 1983 through May 2011. He opined that these audiograms demonstrated a mild, progressive bilateral sensorineural hearing loss, with an “11.3 dB excess loss beyond what would be expected for age in the right ear and a 9.7 dB total excess to the left ear.” The most recent employing establishment audiogram, obtained on May 11, 2011, showed dB losses at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) in the right ear of 10, 5, 15 and 45, respectively, with an average 18 dB loss. Testing at the same frequency levels for the left ear revealed dB losses of 5, 5, 5 and 55, respectively, resulting in an average loss of 19 dB. It was noted that as appellant’s audiometric results did not exceed a 25 dB, he did not have a ratable hearing loss.

By letter dated September 21, 2011, OWCP referred appellant, together with a statement of accepted facts, to Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist, for an otologic examination and audiological evaluation to determine whether appellant sustained hearing loss causally related to his federal employment and, if so, whether the loss was ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Pappas submitted an October 10, 2011 report setting forth findings on examination. He noted appellant’s description of longstanding, constant ringing in both ears. Dr. Pappas diagnosed mild-to-moderate bilateral sensorineural hearing loss and tinnitus, which he attributed to noise exposure in appellant’s federal employment.

An audiometric test was conducted on the same day as Dr. Pappas’ examination. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dB losses of the right ear as 5, 15, 15 and 45, respectively. Dr. Pappas averaged the losses to determine that appellant had an average hearing loss of 20 dB. He then subtracted the fence of 25 dB and multiplied the balance by 1.5, resulting in a zero percent right ear monaural hearing loss. Testing at the same frequency levels noted above revealed dB losses of 10, 15, 10 and 50, respectively, regarding the left ear. Dr. Pappas averaged the losses to obtain an average loss of 21.25 dB. After subtracting a fence of 25 dB, he multiplied the remaining balance by 1.5 to calculate a zero percent left ear monaural hearing loss. Dr. Pappas concluded that appellant had no ratable hearing impairment but would benefit from hearing aids.

² On March 4, 2013 appellant also filed a notice of occupational disease (Form CA-2) for bilateral tinnitus due to work factors on or before June 23, 2011.

On October 21, 2011 OWCP's medical adviser reviewed Dr. Pappas' report and the October 10, 2011 audiometric test results. He agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the (A.M.A., *Guides*) and following the same analysis determined that appellant had zero percent binaural hearing loss. He advised that the date of maximum medical improvement was October 10, 2011, the date of Dr. Pappas' examination. The medical adviser recommended that hearing aids not be authorized.

By decision dated October 24, 2011, OWCP accepted appellant's claim for bilateral hearing loss, but determined that his hearing loss was not severe enough to be considered ratable under the sixth edition of the A.M.A., *Guides*. It did not authorize hearing aids or additional medical benefits.

In a November 4, 2011 letter, appellant requested an oral hearing. He asserted in a November 18, 2011 letter that OWCP wrongfully denied his schedule award claim and failed to mention tinnitus in its October 24, 2011 decision. Appellant explained that the "horrible ringing in both of my ears" was his primary motivation for filing a claim. He later changed his request to a review of the written record. Appellant submitted a February 6, 2012 statement asserting that his constant, bilateral tinnitus was caused by the accepted hearing loss and should therefore be compensable.

By decision dated and finalized March 28, 2012, OWCP's hearing representative affirmed as modified OWCP's October 24, 2011 decision denying appellant's schedule award claim for hearing loss. The hearing representative found that appellant had not established a ratable hearing loss or that he sustained tinnitus. The hearing representative modified the October 24, 2011 decision to authorize bilateral hearing aids as medically necessary to treat the accepted bilateral sensorineural hearing loss. OWCP authorized digital hearing aids on May 3, 2012.

By decision dated March 30, 2012, OWCP accepted bilateral tinnitus in addition to the previously accepted bilateral sensorineural hearing loss. Appellant retired from the employing establishment on March 31, 2012.

On April 4, 2012 appellant claimed a schedule award for tinnitus.

In an April 13, 2012 letter, OWCP advised appellant that its March 30, 2012 decision erroneously accepted the condition of bilateral tinnitus. It allowed him until June 2, 2012 to submit additional medical evidence from a qualified physician supporting a causal relationship between the accepted bilateral sensorineural hearing loss, occupational noise exposure and the claimed bilateral tinnitus.

Appellant submitted a May 2, 2012 report from Dr. Hurlbutt noting that his complaints of tinnitus were "not present until the last year or two of his employment with the government." Dr. Hurlbutt explained that appellant's occupational high-frequency sensorineural hearing loss was severe enough to cause tinnitus. He recommended hearing aids with tinnitus masking devices. Appellant also submitted a May 8, 2012 letter from Paul V. Stephens, an audiologist,

supporting that appellant's noise-induced bilateral sensorineural hearing loss caused bilateral tinnitus.

On January 17, 2013 OWCP's medical adviser stated that appellant was not eligible for a schedule award for tinnitus as he did not have a ratable hearing loss.

By decision dated March 15, 2013, OWCP accepted that appellant sustained bilateral tinnitus due to work factors. It denied his schedule award claim for tinnitus as he had not established a ratable hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA³ 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* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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

³ 5 U.S.C. §§ 8101-8193.

⁴ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides*, (6th ed. 2008) p. 250. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ C.C., Docket No. 11-731 (issued October 11, 2011).

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.¹⁰ 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.¹¹ A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹²

ANALYSIS

OWCP accepted that appellant sustained bilateral sensorineural hearing loss and bilateral tinnitus due to work-related noise exposure. It developed this claim by referring him to Dr. Pappas, a Board-certified otolaryngologist, who examined appellant and obtained an audiogram on October 10, 2011. Dr. Pappas found that appellant had bilateral sensorineural hearing loss and tinnitus due to his employment-related noise exposure. The audiogram performed on that date revealed dB losses of 5, 15, 15 and 45 at 500, 1,000, 2,000 and 3,000 Hz, respectively, for the right ear, which were averaged to total 20. The average of 20 dB, reduced by 25 dB (the first 25 dB were discounted as discussed above), equals 0 dB. Testing of the left ear revealed dB losses of 10, 15, 10 and 50, at 500, 1,000, 2,000 and 3,000 Hz, respectively, which were averaged to total 21.25. The average of 21.25 dB, reduced by 25 dB, equaled 0 dB. Based on this test, Dr. Pappas determined that appellant did not sustain a ratable binaural hearing loss.¹³ The Board finds that he properly applied the A.M.A., *Guides* to the October 10, 2011 audiogram to determine that appellant did not sustain a ratable hearing loss for schedule award purposes.¹⁴

On October 21, 2011 OWCP's medical adviser reviewed the testing performed on appellant on October 10, 2011 and properly applied the applicable standards of the A.M.A., *Guides* to determine that he did not have a work-related ratable binaural hearing loss. Consequently, the Board finds that the weight of the medical evidence establishes that appellant has no ratable loss of hearing pursuant to the A.M.A., *Guides*.

Dr. Pappas' October 10, 2011 report and the June 23, 2011 and May 2, 2012 reports of Dr. Hurlbutt, an attending Board-certified otolaryngologist, found that appellant had bilateral tinnitus. 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

¹⁰ See A.M.A., *Guides* 249.

¹¹ *Id.* K.B., Docket No. 13-443 (issued May 10, 2013); *Robert E. Cullison*, 55 ECAB 570 (2004).

¹² *Charles H. Potter*, 39 ECAB 645 (1988).

¹³ A.M.A., *Guides* 249-51.

¹⁴ See *S.G.*, 58 ECAB 383 (2007).

impairment.¹⁵ 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.¹⁶ Although appellant submitted medical evidence that provided a firm diagnosis of tinnitus, as his hearing loss is not ratable, the Board will affirm OWCP's March 15, 2013 decision finding that he was not entitled to a schedule award.

On appeal, appellant asserts that Dr. Hurlbutt and Dr. Pappas supported a diagnosis of bilateral tinnitus. He contended that OWCP's medical adviser was confused about how to rate tinnitus as he combined the condition with a denied schedule award claim for bilateral hearing loss. Appellant argued that the "theory that tinnitus must contribute to a ratable hearing loss to be considered is not a true statement." The Board notes, however, that OWCP properly applied the A.M.A., *Guides* to the medical evidence in his case. As stated above, as appellant did not sustain a ratable hearing loss, he is not eligible for a schedule award for tinnitus as a stand-alone condition.

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 failed to establish that he has an employment-related ratable binaural hearing loss entitling him to a schedule award.

¹⁵ See *supra* note 10.

¹⁶ See *Richard Larry Enders*, 48 ECAB 184 (1996); *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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