United States Department of Labor
Employees' Compensation Appeals Board

H.B., Appellant	)	
and	)	**Docket No. 12-1875**
	)	**Issued: February 8, 2013**
DEPARTMENT OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, Portsmouth, VA, Employer	)	

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 September 13, 2012 appellant filed a timely appeal of a June 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. 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 the case.

ISSUE

The issue is whether appellant sustained more than four percent right monaural hearing impairment causally related to his employment.

FACTUAL HISTORY

On April 20, 2010 appellant, then a 63-year-old painter at the Norfolk Naval Shipyard, filed a Form CA-2 alleging that he sustained hearing loss as a result of prolonged exposure to

[1] 5 U.S.C. § 8101 *et seq.*

industrial noise since December 14, 1970.[2] A July 30, 1971 audiogram exhibited the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 5, 0, 0 and 15 for the right ear and 5, 5, 5 and 20 for the left ear.

In a March 13, 2010 report, Dr. Mohan L. Chaudhuri, a Board-certified otolaryngologist, certified a February 5, 2010 audiogram showing the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 15, 30 and 65 for the right ear and 20, 15, 30 and 65 for the left ear. Physical examination findings were unremarkable. Dr. Chaudhuri diagnosed bilateral high-frequency sensorineural hearing loss, opined that appellant's condition was noise induced and recommended binaural hearing aids.

OWCP referred appellant to Dr. Eugenia M.G. Gray, a Board-certified otolaryngologist, for a second opinion examination. In a March 30, 2011 report, Dr. Gray reviewed the March 10, 2011 statement of accepted facts and medical file. She noted that appellant's hearing as of July 30, 1971 was normal. Audiometric data obtained on March 30, 2011 exhibited dBA losses of 10, 10, 35 and 55 for the right ear and 10, 10, 25 and 55 for the left ear at 500, 1,000, 2,000 and 3,000 Hz. In addition, physical examination findings did not indicate acoustic neuroma or Meniere's disease. Dr. Gray diagnosed bilateral sensorineural hearing loss due to occupational noise exposure for a 40-year period. She also recommended hearing aids.

By decision dated April 16, 2011, OWCP accepted appellant's occupational disease claim for bilateral sensorineural hearing loss.

Appellant filed a claim for a schedule award on September 8, 2011.

On October 6, 2011 Dr. Duane J. Taylor, an OWCP medical adviser and Board-certified otolaryngologist, reviewed the March 10, 2011 statement of accepted facts and Dr. Gray's March 30, 2011 report. He did not discuss Dr. Chaudhuri's March 13, 2010 report or the February 5, 2010 audiogram. Dr. Taylor agreed that appellant sustained asymmetric binaural sensorineural hearing loss while in the performance of duty. Applying the standard set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (hereinafter A.M.A., *Guides*) to the March 30, 2011 audiogram, he calculated 3.75 percent right monaural hearing impairment and zero percent left monaural hearing impairment. Dr. Taylor advised that hearing amplification was only necessary for the right ear. He identified March 30, 2011 as the date of maximum medical improvement.

By decision dated June 1, 2012, OWCP granted a schedule award for four percent right monaural hearing impairment for the period March 30 to April 13, 2011.

LEGAL PRECEDENT

FECA's schedule award provision and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or

[2] This information was incorporated into the March 10, 2011 statement of accepted facts.

[3] A.M.A., *Guides* (6th ed. 2008).

[4] 20 C.F.R. § 10.404.

loss of use of scheduled members or functions of the body. For instance, an employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.[5] 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 to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.[6]

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 up and averaged. Then, the "fence" of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA do not impair the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. Binaural loss is determined by first calculating the loss in each ear using the formula for monaural loss. The lesser loss is then multiplied by five and 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.[7]

ANALYSIS

The case record contains Dr. Chaudhuri's March 13, 2010 report, which certified an earlier February 5, 2010 audiogram showing dBA losses of 20, 15, 30 and 65 for the right ear and 20, 15, 30 and 65 for the left ear at 500, 1,000, 2,000 and 3,000 Hz. On the other hand, a March 30, 2011 audiogram obtained by Dr. Gray confirmed dBA losses of 10, 10, 35 and 55 for the right ear and 10, 10, 25 and 55 for the left ear at the same frequency levels. Thereafter, Dr. Taylor applied the pertinent A.M.A., *Guides* provision to the March 30, 2011 audiometric results and concluded that appellant sustained 3.75 percent right monaural hearing impairment. Relying on the opinion of its medical adviser, OWCP granted a schedule award for four percent right monaural hearing impairment for the period March 30 to April 13, 2011.[8]

The Board finds that the case is not in posture for decision. When multiple audiograms are submitted by more than one specialist and obtained approximately within two years of each other, OWCP should evaluate all such audiograms and, if the audiograms differ, explain why it selected a particular audiogram over another in determining the percentage of hearing loss. It should not select an audiogram without explanation, even if the one chosen is the most recent.[9] In this case, Dr. Taylor did not discuss either Dr. Chaudhuri's March 13, 2010 report or the

[5] 5 U.S.C. § 8107(c)(13).

[6] 20 C.F.R. § 10.404. *See also Mark A. Holloway*, 55 ECAB 321, 325 (2004).

[7] *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (January 2010) (fractions should be rounded down from .49 or up from .50).

[9] *Joshua A. Holmes*, 42 ECAB 231 (1990); *John C. Messick*, 25 ECAB 333 (1974).

February 5, 2010 audiogram reviewed by Dr. Chaudhuri, let alone provide rationale for selecting the March 30, 2011 audiogram as the basis for computing appellant's hearing impairment. On remand, OWCP shall have its medical adviser evaluate both audiograms to determine the percentage of hearing loss and provide medical rationale for choosing the audiogram that most accurately reflects the extent of appellant's condition. Should the medical adviser be unable to provide rationale for selecting one of the audiograms in question, it should arrange another medical evaluation of appellant's condition.[10] After conducting further development as may be necessary, OWCP shall render an appropriate decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2012 merit decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 8, 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

[10] *See H.M.*, Docket No. 11-108 (issued August 9, 2010).