



sustained hearing loss due to noise exposure in the course of his federal employment. He was last exposed to the work factors alleged to have caused his condition on September 1, 1995.

On March 29, 2010 OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure. On April 26, 2010 appellant filed a claim for a schedule award. In a letter dated May 12, 2010, OWCP advised him that it would take no further action on his schedule award claim until it had retrieved the case record for his prior hearing loss claim, assigned file number xxxxxx353.

By decision dated November 18, 2010, OWCP rescinded its acceptance of appellant's claim for bilateral hearing loss. It found that the current claim duplicated his previously accepted claim for hearing loss in file number xxxxxx353.

On December 11, 2010 appellant requested reconsideration. In a nonmerit decision dated January 6, 2011, OWCP denied his request to reopen the case for further review of the merits under section 8128.

Appellant appealed to the Board. In a November 25, 2011 order remanding case, the Board set aside the November 18, 2010 and January 6, 2011 decisions.<sup>2</sup> The Board noted that the evidence from file number xxxxxx353 upon which OWCP based its rescission was not contained in the record on appeal. The Board remanded the case for OWCP to combine the present case record with the evidence from file number xxxxxx353.

On December 12, 2011 OWCP combined the case records. The record indicates that, by decision dated October 26, 1998, OWCP accepted appellant's hearing loss claim under file number xxxxxx353. It found, however, that his hearing loss was not sufficient to be ratable and consequently found that he was not entitled to a schedule award.

OWCP prepared an updated statement of accepted facts and referred appellant to Dr. Robert H. Hosea, a Board-certified otolaryngologist, for a second opinion examination. In a report dated December 27, 2011, Dr. Hosea diagnosed sensorineural hearing loss due in whole or in part to noise exposure in federal employment. He explained that appellant's noise exposure over time was sufficient to cause the loss and that it was "certainly much greater than presbycusis." Dr. Hosea recommended hearing aids.

On January 4, 2012 an OWCP medical adviser noted that appellant had retired in September 1, 1995. In 1998, OWCP determined that his hearing loss was not severe enough to be ratable. The medical adviser stated that hearing loss did not worsen after the cessation of noise exposure and thus found that any decrease in hearing after 1998 was not work related. He further indicated that OWCP should not authorize hearing aids. The medical adviser concluded that appellant was not entitled to a schedule award.

On January 11, 2012 OWCP accepted that appellant sustained bilateral sensorineural hearing loss. By decision dated January 11, 2012, it denied his claim for a schedule award after finding that any increase in hearing loss and resulting ratable impairment after 1998 was not

---

<sup>2</sup> *Order Remanding Case*, Docket No. 11-804 (issued November 25, 2011).

causally related to his employment. OWCP further found that the medical evidence did not establish that appellant would benefit from hearing aids.

On February 1, 2012 appellant requested an oral hearing before an OWCP hearing representative. Following a preliminary review, the hearing representative vacated the January 11, 2012 decision. She noted that a claimant could receive an award for increased hearing loss even after noise exposure ended if supported by the medical evidence. The hearing representative remanded the case for OWCP to obtain an opinion from Dr. Hosea regarding whether appellant's increased hearing loss after 1998 was due to noise exposure in his work duties prior to September 1995.

In a report dated May 3, 2012, Dr. Paul S. Camnitz, a Board-certified otolaryngologist, discussed appellant's history of noise exposure while working for the employing establishment. Appellant's complaints of hearing loss and tinnitus had increased with time. Dr. Camnitz stated:

“There is no question in my mind that his tinnitus and hearing loss are at least partially related to his noise trauma. Of course, both hypertension and diabetes can also be associated with these symptoms, but often noise trauma and vascular problems (such as his medical issues) will be additive. The fact that he has the noise trauma predisposes him to be worse.”

On May 21, 2012 OWCP requested that Dr. Hosea address whether appellant's additional hearing loss since 1998 was due to noise exposure in the course of his federal employment before September 1, 1995. In a May 21, 2012 response, Dr. Hosea related that a comparison of the most recent audiogram to the audiometric testing performed August 31, 1995 revealed minimal changes except at the 4,000 and 8,000 hertz (Hz) level.<sup>3</sup> He asserted that if appellant had little noise exposure from 1998 to 2011 then the changes were “more likely than not related to presbycusis.”

By decision dated June 1, 2012, OWCP found that appellant was not entitled to a schedule award. It further denied authorization for hearing aids.

On appeal, appellant's attorney contended that a conflict exists between Dr. Camnitz and Dr. Hosea regarding whether he has hearing loss due to his noise exposure. She noted that if his work exposure contributed in any way to the hearing loss it is compensable. Counsel argued that OWCP should have asked Dr. Hosea if the noise exposure contributed in any way to the increased hearing loss. She also argues that Dr. Hosea did not address appellant's tinnitus and that his report is not rationalized. Counsel also maintains that the medical evidence shows that he should have hearing aids.

---

<sup>3</sup> An August 31, 1998 audiogram revealed the following decibel losses at 500, 1,000, 2,000, 3,000, 4,000 and 8,000 Hz: 25, 25, 25, 30, 25 and 30 for the left ear and 30, 30, 15, 30, 30 and 40 for the right ear. A December 27, 2011 audiogram performed for Dr. Hosea revealed decibel losses at 500, 1,000, 2,000, 3,000, 4,000 and 8,000 Hz: 25, 30, 35, 45, 35 and 60 for the left ear and 25, 30, 25, 35, 35 and 55 for the right ear.

## LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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. 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

## ANALYSIS -- ISSUE 1

In 1998, OWCP accepted that appellant sustained hearing loss under file number xxxxxx353. It determined, however, that the hearing loss was not severe enough to be ratable. In December 2009, appellant again filed a claim for hearing loss. He was last exposed to the work factors alleged to have resulted in his hearing loss in September 1995. In accordance with the Board's instructions, OWCP combined the case records and referred appellant to Dr. Hosea for a second opinion examination. Based on Dr. Hosea's opinion, it again accepted that appellant sustained employment-related hearing loss but found that the increase in hearing loss since 1998 was not due to noise exposure in the course of his federal employment. Consequently, OWCP denied his claim for a schedule award.

The Board finds that Dr. Hosea's opinion is sufficient to establish that appellant's increase in hearing loss after 1998 was not employment related. On December 27, 2011 Dr. Hosea found that appellant had sensorineural hearing loss caused in whole or in part by noise exposure in his federal employment. He asserted that the work-related exposure was sufficient to result in the hearing loss and was more than would be expected with presbycusis. On May 21, 2012 OWCP requested that Dr. Hosea explain whether appellant's additional hearing loss subsequent to 1998 resulted from his noise exposure prior to September 1, 1995. In response, Dr. Hosea compared audiometric testing in August 1995 with the current audiometric testing and noted that it was relatively unchanged except at 4,000 and 8,000 Hz. He attributed the changes at 4,000 and 8,000 Hz "more likely than not" to presbycusis. While Dr. Hosea expressed his conclusion using the phrase "more likely than not," terms such as probably, most likely or more likely need not constitute a speculative opinion, depending upon the context of usage. Such words may mean that the physician is expressing a reasonable certainty, as opposed to absolute certainty.<sup>8</sup> It is apparent from the context that Dr. Hosea was expressing reasonable certainty

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *S.T.*, Docket No. 08-1675 (issued May 4, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.4(a)(5) (September 1993).

that appellant's increase in hearing loss was not related to noise exposure before his retirement in 1995.

Appellant submitted a May 3, 2012 report from Dr. Camnitz, who found that he sustained hearing loss and tinnitus due to federal employment. Dr. Camnitz noted that appellant's conditions of hypertension and diabetes could also cause a loss of hearing but that his noise exposure "predisposes him to be worse." OWCP, however, accepted that appellant sustained hearing loss due in part to noise exposure in the course of his federal employment. The issue is whether the increase in his hearing loss after 1998 was due to his work exposure to noise prior to his retirement in 1995 such that he may have a ratable employment-related impairment. Dr. Camnitz did not address this issue and thus his opinion is of diminished probative value.

On appeal, appellant's attorney contends a conflict exists between Dr. Camnitz and Dr. Hosea regarding whether appellant has hearing loss due to his noise exposure and notes that if his work exposure contributed in any way to the hearing loss it is compensable. As noted, OWCP accepted his hearing loss as employment related. The issue of whether appellant had a ratable impairment as a result of noise exposure in his federal employment was not addressed by Dr. Camnitz. Thus, Dr. Camnitz's opinion is insufficient to create a conflict.

Appellant's attorney also contends that Dr. Hosea's report is not rationalized. Dr. Hosea, however, reviewed a statement of accepted facts and compared audiograms from 1998 and 2001 in finding that appellant's increased hearing loss after 1998 resulted from presbycusis rather than work-related noise exposure.

Counsel argues that OWCP should have asked Dr. Hosea if the noise exposure contributed in any way to the increased hearing loss. OWCP asked Dr. Hosea whether appellant's increased hearing loss after 1998 resulted from work duties performed prior to September 1995. Appellant's attorney also argued that Dr. Hosea did not address appellant's tinnitus. OWCP has not accepted that appellant sustained employment-related tinnitus. Where appellant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>9</sup> Dr. Camnitz did not provide rationale for his opinion that appellant sustained tinnitus due to work factors. Medical conclusions unsupported by rationale are of little probative value.<sup>10</sup>

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.

---

<sup>9</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>10</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

## LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA<sup>11</sup> 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 OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.<sup>12</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.<sup>13</sup> 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.<sup>14</sup>

## ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding whether appellant is entitled to hearing aids. OWCP accepted appellant's hearing loss as employment related but that he was not entitled to a schedule award. However, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as a hearing aid may still be provided if any causally related hearing loss exists.<sup>15</sup> Dr. Hosea found that appellant had an employment-related hearing loss and recommended hearing aids. OWCP's medical adviser stated that hearing aids should not be authorized but did not provide sufficient explanation for his conclusion. In its June 1, 2012 decision, OWCP found that the medical evidence showed that appellant would not benefit from hearing aids but provided no findings or explanation supporting its determination.

Proceedings under FECA are not adversarial in nature. OWCP shares in the responsibility to develop the evidence and has an obligation to see that justice is done.<sup>16</sup> As it did not explain why it declined to authorize hearing aids, the Board finds that the case must be remanded for further development regarding this aspect of appellant's claim. Following this and such other development as is deemed necessary, it shall issue an appropriate merit decision.

---

<sup>11</sup> *Supra* note 1.

<sup>12</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>13</sup> *Id.* at § 8103.

<sup>14</sup> *See F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, Medical, *Schedule Awards*, Chapter 3.400.3(d)(2) (October 1990).

<sup>15</sup> *See* Federal (FECA) Procedure Manual, *supra* note 14; *Raymond VanNett*, 44 ECAB 480 (1993).

<sup>16</sup> *See Lyle Dayberry*, 49 ECAB 369 (1998); *see also Raymond VanNett*, *supra* note 15 (where OWCP began to develop appellant's hearing loss claim but did not complete such development, the case was remanded for further evidentiary development).

**CONCLUSION**

The Board finds that appellant did not sustain a ratable employment-related hearing loss that would entitle him to a schedule award. The Board further finds that the case is not in posture for decision regarding whether hearing aids should be authorized.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 3, 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