

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

M.H., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, Quantico, VA,
Employer**

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**Docket No. 12-1612
Issued: January 7, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 23, 2012 appellant filed a timely appeal from a July 2, 2012 decision of the Office of Workers' Compensation Programs denying his schedule award claim. 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 has an employment-related ratable binaural (both ears) hearing loss entitling him to a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 4, 2011 appellant, then a 50-year-old criminal investigator, filed an occupational disease claim alleging that on November 30, 2008 he first became aware of his hearing loss and its relationship to his employment.

By letter dated September 15, 2011, OWCP referred appellant, together with a statement of accepted facts to Dr. Stephen M. Bane, Board-certified in sleep medicine, for an otologic examination and audiological evaluation. In a September 29, 2011 report, Dr. Bane set forth findings on examination and noted that appellant had normal hearing at the beginning of his employment. He diagnosed right ear mild sensorineural loss and left ear moderate sensorineural loss, which he attributed to noise exposure in appellant's job. An audiometric test was conducted that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear, 10, 10, 15 and 15 decibels; left ear 10, 5, 15 and 45 decibels. Dr. Bane found appellant had no ratable hearing impairment.

On November 1, 2011 OWCP accepted the claim for bilateral sensorineural hearing loss.

On December 19, 2011 an OWCP medical adviser reviewed Dr. Bane's report and the September 29, 2011 audiometric test. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a zero percent monaural (one ear) hearing loss in each ear and a zero percent binaural hearing loss. The medical adviser determined that appellant had bilateral sensorineural hearing loss (asymmetric) but not severe enough to be ratable for a schedule award.

By decision dated July 2, 2012, OWCP denied appellant's claim for a schedule award as it found the extent of his hearing loss was not ratable.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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 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.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, OWCP adopted the

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379 (2006).

⁵ 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ 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.⁸ Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

ANALYSIS

OWCP referred appellant to Dr. Bane to evaluate his hearing loss. An OWCP medical adviser agreed with Dr. Bane's finding that appellant's hearing loss was employment related. The medical adviser applied OWCP's standardized procedures to the September 29, 2011 audiogram performed for Dr. Bane to determine if the extent of hearing loss was ratable for schedule award purposes. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 10, 15 and 15, respectively. These decibels were totaled at 50 and were divided by 4 to obtain an average hearing loss at those cycles of 12.50 decibels. The average of 12.50 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to total zero, which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibels losses of 10, 5, 15 and 45 respectively. These decibels were totaled at 75 and were divided by 4 to obtain the average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to total zero, which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear.

⁶ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010). See *P.B.*, Docket No. 10-103 (issued July 23, 2010).

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

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Thomas O. Bouis*, 57 ECAB 602 (2006); *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

The Board finds that OWCP's medical adviser properly applied the standards to Dr. Bane's report and the September 29, 2011 audiogram. Appellant has a nonratable binaural hearing loss. On appeal he contends that he is entitled to a schedule award. As appellant is not entitled to a schedule award for his hearing loss as it is not ratable under the A.M.A., *Guides*.

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 decision of the Office of Workers' Compensation Programs dated July 2, 2012 is affirmed.

Issued: January 7, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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