



Appellant was exposed to noises from grinders, cranes, motors, ventilators, carbon arc, sandblasting and needle guns. He worked from 1990 to 2002 as planner/estimator. Appellant's office was located near to ship fitter shop and pipe shop, motors, grinders and cranes. Earplugs and eye protection were provided. Appellant submitted results of audiograms dated 1968 to May 29, 2002 which showed varying degrees of hearing loss.

In order to determine whether appellant sustained hearing loss from his federal employment, OWCP referred him for a second opinion examination to Dr. Gerald G. Randolph, a Board-certified otolaryngologist. In a November 29, 2012 report, Dr. Randolph stated that appellant had a bilateral sensorineural hearing loss due to a combination of past noise exposure and the aging process. He noted that the extent of appellant's hearing loss exceeded that which would normally be predicted on the basis of presbycusis. An audiogram dated November 19, 2012, with an attached calibration certificate, recorded levels of 10, 20, 45 and 60 decibels on the left at 500, 1,000, 2,000 and 3,000 Hertz (Hz), respectively and 10, 10, 30 and 45 decibels on the right. Based on the audiogram results, appellant had a ratable hearing loss of 0 percent in the right ear, 13.125 percent in the left ear, or a binaural hearing loss of 2.19 percent, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He stated that appellant's workplace exposure was of sufficient intensity and duration to have caused or aggravated the hearing loss. Dr. Randolph noted that appellant underwent an audiogram on May 29, 2002 which showed a ratable hearing loss of zero percent in the right ear and zero percent in the left ear.

In a supplemental February 8, 2013 report, Dr. Randolph noted that appellant had retired from federal employment in 2002. He stated that an industrial audiogram dated May 29, 2002 revealed a bilateral high frequency sensorineural hearing loss with an audiometric configuration entirely compatible with hearing loss due to noise exposure. Appellant had a ratable hearing loss of zero percent in both ears based on the May 29, 2002 audiogram. Dr. Randolph stated, however, that the bilateral hearing loss was severe enough to recommend hearing aids. He stated that since 2002 appellant's hearing had degenerated due to factors other than his federal employment, resulting in a binaural hearing loss of 2.19 percent based on the November 19, 2012 audiogram.

In a March 12, 2013 report, Dr. Lois J. Weaver, a Board-certified internist and OWCP medical adviser, reviewed appellant's medical record and the statement of accepted facts. She stated that the May 29, 2002 audiogram represented the bilateral high frequency pattern of sensorineural hearing loss most probably attributable to federal employment, from which he retired on May 31, 2002. Dr. Weaver used the May 31, 2002 audiogram because it was obtained closest to the date of federal retirement and because hearing loss due to noise exposure occurred at the time of noise exposure and generally did not progress at a later date. The May 29, 2002 otologic and audiologic testing revealed: for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz losses of 5, 5, 25 and 55 decibels. The decibel losses were totaled at 90 decibels and were divided by 4 to obtain the average hearing loss of 22.5 decibels. This average loss was then reduced by 25 decibels to total zero percent left monaural loss. Testing for the right ear revealed decibel losses of 5, 10, 15 and 25 respectively. The decibel losses were totaled at 55 decibels and were divided by 4 to obtain the average hearing loss of 13.75 decibels. This average loss was then reduced by 25 decibels, resulting in a total zero percent right monaural

loss. Dr. Weaver concluded that appellant had no ratable hearing loss under the sixth edition of the A.M.A., *Guides*. She recommended that hearing aids be authorized.

By decision dated March 6, 2013, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

By decision dated March 14, 2013, OWCP denied appellant's claim for a schedule award. It found that the medical evidence did not establish a ratable hearing loss.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</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 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.<sup>4</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.<sup>6</sup> Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> 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.<sup>8</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Id.*

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b (January 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

## ANALYSIS

OWCP accepted that appellant sustained a bilateral hearing loss due to noise exposure from his federal employment.<sup>10</sup> The issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides*, warranting a schedule award. Dr. Randolph provided an audiological evaluation and a November 19, 2012 audiogram which showed a 2.19 percent binaural hearing loss. However, in rating the extent of noise-induced hearing loss due to occupational exposure Dr. Weaver, OWCP's medical adviser, reviewed a May 29, 2002 audiogram taken prior to appellant's retirement on May 31, 2002. She noted that, of the audiograms of record, the May 29, 2002 audiogram was the best representation of the extent of loss due to appellant's noise exposure in his federal employment. The Board notes that, under the Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Progression, Chapter 3.700.4(b)(3),<sup>11</sup> noise-induced hearing loss does not typically progress after exposure to noise ceases; a claim with an audiogram showing less than a 25-decibel loss soon after exposure ceases and a second audiogram showing a ratable loss may be denied if OWCP's medical adviser provides a well-reasoned opinion.

The May 29, 2002 audiogram showed hearing levels of 5, 10, 15 and 25 decibels on the right at 500, 1,000, 2,000 and 3,000 Hz, to find an average of 13.75. The average of 13.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), to total 0 decibels. With regard to the left ear, the audiogram showed hearing levels of 5, 5, 25 and 55 decibels on the left at 500, 1,000, 2,000 and 3,000 Hz, to find an average of 22.5. The average of 22.5 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 0 decibels. Based on this test Dr. Weaver determined that appellant did not sustain a ratable hearing loss.<sup>12</sup> The Board finds that she properly applied the A.M.A., *Guides* to the May 29, 2002 audiogram to determine that appellant did not sustain a ratable hearing loss for schedule award purposes.<sup>13</sup>

The Board further finds that Dr. Weaver, OWCP's medical adviser, provided sufficient rationale for selecting the May 29, 2002 audiogram over other available audiograms. Dr. Weaver reviewed the otologic and audiologic testing performed on appellant and found that the May 29, 2002 audiogram represented the bilateral high frequency pattern of sensorineural hearing loss most probably attributable to federal employment, from which appellant retired on May 31, 2002, as opposed to the November 19, 2012 audiogram. She explained that hearing loss due to noise exposure occurs at the time of noise exposure and generally does not get worse at a later date. The Board further notes that Dr. Randolph stated in his November 19, 2012 report and his February 8, 2013 supplemental report that since 2002 appellant's hearing had degenerated due to age-related factors other than his federal employment. Based on the above factors, Dr. Weaver found no basis on which to attribute appellant's hearing loss after May 31,

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<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>11</sup> *Supra* note 5 at Chapter 3.700.4(b)(3) (January 2010).

<sup>12</sup> A.M.A., *Guides* 249-51.

<sup>13</sup> See *S.G.*, 58 ECAB 383 (2007).

2002 to his employment. The Board finds that Dr. Weaver provided sound medical reasoning for selecting the May 29, 2002 audiogram as best representing appellant's employment-related hearing loss. It was a complete audiogram performed two days prior to appellant's retirement. Additionally the subsequent audiogram of November 19, 2012 showed deterioration in appellant's hearing postretirement, which is not typical of hearing loss due to noise exposure.<sup>14</sup>

Although appellant submitted results from audiometric testing performed from 1968 to April 2001, these audiograms are insufficient to satisfy his burden of proof as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy appellant's burden of proof.<sup>15</sup> Dr. Weaver, OWCP's medical adviser, provided a reasoned opinion explaining why appellant's binaural hearing loss was not due to the noise in appellant's employment, following his retirement but rather was due to age-related factors. The Board finds that her report represents the weight of the evidence.

OWCP's medical adviser properly applied the applicable standards of the A.M.A., *Guides*, to determine that appellant did not have a work-related, ratable, bilateral hearing loss. The March 14, 2013 decision is affirmed.

### **CONCLUSION**

The Board finds that appellant has not established a ratable, bilateral hearing loss entitling him to a schedule award.

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<sup>14</sup> See *Marco A. Padilla*, 51 ECAB 2020 (1999) (where OWCP's medical adviser provided sufficient rationale for selecting an audiogram on the grounds that it was more representative of appellant's employment-related hearing loss than were those submitted prior to retirement and those that were incomplete and undated).

<sup>15</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 29, 2013  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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