



## **FACTUAL HISTORY**

On November 6, 2012 appellant, then a 56-year-old supervising planner and general estimator, filed an occupational disease claim alleging hearing loss and tinnitus. He noted exposure to pneumatic tools and aircraft engines for 33 years of flight operations during 13 deployments aboard aircraft carriers and bomb explosions while deployed to Iraq and Afghanistan. Appellant submitted the results of multiple audiometric evaluations obtained by the employing establishment between April 19, 1996 and February 3, 2012 as well as a hearing history/summary chart.

In a November 8, 2012 letter, OWCP requested that appellant submit further evidence in support of his claim.

On November 8, 2012 appellant stated that he first noticed his hearing loss on December 1, 2008. He first related it to his work exposure on April 1, 2012, when he noticed an increased ringing in his ears after numerous explosions of bombs.

By letter dated January 24, 2013, the employing establishment controverted appellant's claim.

On February 7, 2013 OWCP referred appellant to Dr. R. Michael Loper, a Board-certified otolaryngologist, for a second opinion. In a March 5, 2013 report, Dr. Loper found that appellant had a sensorineural hearing loss due to noise exposure in his employment. He noted that the configuration of the hearing loss was consistent with noise exposure and that the extent of hearing loss was in excess of presbycusis. Dr. Loper recommended bilateral hearing aids if appellant wished, but noted that he was not bothered excessively by his hearing loss or tinnitus. He provided an audiological evaluation of appellant's hearing loss measured for both air and bone readings in the right and left ears. Dr. Loper noted that there was no significant air-bone gap present.

On March 7, 2013 OWCP referred appellant's case to its medical adviser for review. On March 12, 2003 the medical adviser utilized Dr. Loper's audiogram results to determine that appellant had no ratable hearing loss.

By decision dated March 12, 2013, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It denied his claim for a schedule award on the grounds that his hearing loss was not severe enough to be ratable for schedule award purposes. OWCP further found that medical evidence did not establish that appellant required a hearing aid.

## **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>2</sup> 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 of loss of a member shall be determined. The

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<sup>2</sup> *Id.* at §§ 8101 and 8193.

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* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule loss and the Board has concurred in such adoption.<sup>3</sup>

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 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.<sup>4</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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 and then 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.<sup>5</sup> The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant's claim was accepted for bilateral sensorineural hearing loss. OWCP denied his claim for a schedule award finding that the extent of his loss was not severe enough to be ratable.

OWCP referred appellant to Dr. Loper for an otologic examination and audiologic evaluation. Dr. Loper concluded that appellant had sustained a sensorineural hearing loss resulting from factors of federal employment.

In a March 12, 2013 report, OWCP's medical adviser reviewed the March 5, 2013 audiogram obtained by Dr. Loper. Appellant's audiogram revealed the following decibels losses at 500, 1,000, 2,000 and 3,000 Hertz: 5, 15, 15 and 55 decibels for the right ear and 10, 10, 10 and 60 decibels for the left ear. Both ears totaled 90 decibels. When divided by four, this average 22.5 decibels. Because these averages are below the 25 decibel fence, appellant's hearing loss does not import his ability to hear every day sounds under everyday listening conditions. This does not mean that appellant does not have a hearing loss. It means that the extent of the loss is not sufficient to constitute a ratable impairment according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold.

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<sup>3</sup> *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

<sup>4</sup> *See* A.M.A., *Guides* 250.

<sup>5</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>6</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

The Board finds that OWCP properly denied a schedule award for tinnitus.<sup>7</sup> 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. If tinnitus contributes to a ratable loss of hearing, a claimant's schedule award may reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with activities of daily living, up to five percent may be added to a measureable binaural hearing impairment.<sup>8</sup> The Board has held that there is no basis for paying a schedule award for tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.<sup>9</sup> As there is no ratable hearing loss, there can be no schedule award for tinnitus. Accordingly, the Board will affirm the March 12, 2013 decision finding that appellant was not entitled to a schedule award.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103 of FECA 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>10</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>11</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>12</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP did not abuse its discretion by denying authorization of hearing aids. Dr. Loper recommended bilateral hearing aids if appellant wished, but did not state that appellant required hearing aids.<sup>13</sup> There is no medical evidence from a physician stating that appellant should be provided with hearing aids or any other medical devices for treatment for his

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<sup>7</sup> *R.R.*, Docket No. 12-1840 (issued February 14, 2013).

<sup>8</sup> *See A.M.A., Guides* 249.

<sup>9</sup> *See Richard Larry Enders*, 48 ECAB 184 (1996); *see also supra* note 7.

<sup>10</sup> 5 U.S.C. § 8103. *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>11</sup> *Id.*

<sup>12</sup> *See K.S.*, Docket No. 13-154 (issued April 17, 2013).

<sup>13</sup> *See R.C.*, Docket No. 13-498 (issued April 16, 2013).

employment-related hearing loss. The Board finds that, OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.

**CONCLUSION**

The Board finds that appellant has not established that he has a ratable hearing loss entitling him to a schedule award. The Board further finds that OWCP properly denied appellant hearing aids.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 12, 2013 is affirmed.

Issued: November 14, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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