

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

R.G., Appellant)	
)	
and)	Docket No. 13-1426
)	Issued: November 21, 2013
DEPARTMENT OF THE ARMY, U.S. ARMY)	
MEDICAL COMMAND, Fort Shafter, HI,)	
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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 29, 2013 appellant filed a timely appeal from a May 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. 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 established that he sustained more than a four percent monaural (left ear) loss of hearing, for which he received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that the injury did not occur over a two-week period from June 9 to 23, 2011 but had progressed since 2001. He further contends that the May 7, 2012 audiogram showed increased hearing loss and OWCP had the burden of proof to disprove the report.

FACTUAL HISTORY

On April 6, 2011 appellant, then a 63-year-old police officer, filed an occupational disease claim (Form CA-2) alleging tinnitus and hearing loss due to factors of his federal employment. He stated that he was constantly exposed to high noise levels since 2002.

Appellant submitted audiograms dated June 2, 2005 through May 6, 2011 as part of the employer's hearing conservation program. In an October 14, 2009 report, Dr. Leslie J. Peters, an audiologist, diagnosed bilateral, moderate high frequency sensorineural hearing loss. He noted that appellant had been employed as a police officer since 2002 and was exposed to high-level impulse noise (gun fire) on a routine basis.

OWCP referred appellant and a statement of accepted facts to Dr. Meredith Pang, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. Dr. Pang performed an otologic evaluation of appellant on June 9, 2011 and audiometric testing was obtained on his behalf. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 5, 15, 30 and 25 decibels; left ear 10, 15, 40 and 45 decibels. Dr. Pang determined that appellant sustained bilateral mild low and right mild and left mild-to-moderate high frequency sensorineural hearing loss due to noise exposure in his federal employment. Appellant raised the possibility that his left ear radio, which he wore since 2001, may have promoted the slightly worse left hearing loss as he already had asymmetric high frequency hearing loss in 2001.

On July 3, 2011 Dr. David N. Schindler, an OWCP medical consultant and Board-certified otolaryngologist, reviewed Dr. Pang's report and the audiometric test of June 9, 2011. He concluded that 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 nonratable hearing loss in the right ear, a 4 percent monaural hearing loss in the left ear or a 0.6 percent bilateral hearing loss. Dr. Schindler noted that tinnitus was not rated, a hearing aid for the left ear was indicated and that the date of maximum medical improvement was June 9, 2011.

By decision dated September 30, 2011, OWCP accepted that appellant sustained bilateral hearing loss due to workplace exposure to noise. On October 21, 2011 appellant filed a claim for a schedule award.

By decision dated April 9, 2012, OWCP granted appellant a schedule award for four percent monaural hearing loss of the left ear. The period of the award was from June 9 to 23, 2011 or 2.08 weeks. OWCP noted that a 4 percent monaural hearing loss produced a greater schedule award than a binaural hearing loss of 0.6 percent.

On May 1, 2012 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated August 6, 2012, an OWCP hearing representative affirmed the April 9, 2012 decision.

On August 12, 2012 appellant requested reconsideration. He submitted a May 7, 2012 audiogram showing testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second which revealed the following: right ear 10, 20, 30 and 25 decibels; left ear 15, 30, 50 and 60 decibels.

By decision dated May 10, 2013, OWCP denied modification of its August 6, 2012 decision, noting that the May 7, 2012 audiogram was not sufficient to rate appellant's hearing loss as it lacked speech testing or bone conduction scores and was not prepared or certified as accurate by a physician as defined by FECA.

LEGAL PRECEDENT

The schedule award provision of FECA² 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 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

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. 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, 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.⁴

ANALYSIS

Dr. Schindler reviewed the report of Dr. Pang, to whom OWCP referred appellant for an otologic examination and audiological evaluation. Dr. Pang reported that appellant had a bilateral mild low, a right mild and left mild, moderate high-frequency hearing loss, which was

² *Id.*

³ *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ *See E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

worse in the left ear. Dr. Schindler concluded that appellant had four percent monaural hearing loss in the left ear. He properly applied OWCP's standardized procedures to Dr. Pang's June 9, 2011 audiogram which recorded frequency levels at the 500, 1,000, 2,000 and 3,000 cycles per second levels and revealed decibel losses of 5, 15, 30 and 25 respectively in the right ear for a total decibel loss of 75 on the right. Dr. Schindler followed established procedures and divided this total by 4 which resulted in an average loss of 18.75 decibels and subtracted the fence of 25 decibels to equal 0 decibels. He then multiplied this by the established factor of 1.5 to result in a zero percent monaural hearing loss for the right ear. Dr. Schindler properly followed the same procedure on the left, noting that the test results for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 15, 40 and 45 decibels respectively, for a total of 110 decibels. He divided this by 4, for an average hearing loss of 27.5 decibels, subtracted the fence of 25 decibels to equal 2.5 decibels, and multiplied this by the established factor of 1.5, for a 4 percent monaural hearing loss for the left ear. The report therefore established that appellant was entitled to a schedule award for a four percent monaural hearing loss of the left ear.⁵ In its April 9, 2012 schedule decision, OWCP noted that a 4 percent monaural hearing loss produced a greater award than a binaural hearing loss of 0.6 percent.

A schedule provides for payment of compensation for a specific number of weeks as prescribed by the statute.⁶ With regard to appellant's contention that he was entitled to a schedule award for greater than a 4 percent monaural loss of hearing of the left ear, section 8107(c)(13)(A) of FECA provides that for a 100 percent (total) loss of hearing in one ear, a claimant is entitled to 52 weeks' compensation.⁷ Section 8107(c)(13)(B) provides that for a 100 percent loss of hearing of both ears, a claimant is entitled to 200 weeks' compensation.⁸ As appellant sustained 4 percent monaural hearing loss, he is entitled to 4 percent of 52 weeks or 2.08 week's compensation. The weight of probative medical opinion does not establish a greater loss.

On appeal, appellant contends that the injury did not occur over a two-week period from June 9 to 23, 2011 but had progressed since 2001. OWCP did not find that appellant's injury occurred over a two-week period, but awarded him compensation in the form of a schedule award to be paid over a two-week period from June 9 to 23, 2011. Appellant's claim was properly adjudicated as an occupational disease.

Appellant further contends that the May 7, 2012 audiogram showed increased hearing loss and OWCP had the burden of proof. Although he submitted results from audiometric testing performed on May 7, 2012, the audiogram is insufficient to satisfy appellant's burden of proof as it does not comply with the requirements set forth under OWCP. It lacks speech testing and bone conduction scores and was not prepared or certified as accurate by a physician as defined by FECA. The audiogram was not accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. It is

⁵ See *S.G.*, 58 ECAB 383 (2007).

⁶ 5 U.S.C. § 8107.

⁷ *Id.* at § 8107(c)(13)(A).

⁸ *Id.* at § 8107(c)(13)(B).

appellant's burden to submit a properly prepared and certified audiogram to OWCP.⁹ OWCP was not required to rely on this evidence in determining the degree of appellant's hearing loss as it failed to constitute competent medical evidence.¹⁰

The Board has recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relation is supported by the medical evidence of record.¹¹ However, the record does not contain an accompanying report by a physician providing a rationalized medical opinion on causal relationship. Thus, the Board finds that there is no basis on which to reopen the case for further development or to grant a schedule award for more than a four percent monaural hearing loss under OWCP's standardized procedures.¹²

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 appellant has not established that he sustained more than a four percent monaural hearing loss of the left ear, for which he received a schedule award.

⁹ See *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231, 236 (1990). See also *J.B.*, Docket No. 12-607 (issued August 9, 2012).

¹⁰ *Id.* See also *H.M.*, Docket No. 13-1061 (issued July 29, 2013); *M.T.*, Docket No. 12-1294 (issued December 6, 2012).

¹¹ See *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b)(2) (April 1995). If, on the other hand, the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period.

¹² *Cf. Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2013
Washington, DC

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

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

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