

industrial machinery, which resulted in a permanent binaural hearing loss. In an undated letter, appellant described his employment history, stating that he had been employed by the U.S. Navy from August 4, 1975 through August 3, 1979; by the Naval Air Propulsion Center from March 1980 through June 1998; and by Tobyhanna Army Depot from June 1998 through the present. He first noticed his hearing loss in November 2009 and first realized that it was related to his federal employment on February 24, 2011.

In support of his claim, appellant submitted audiogram results from his former employing establishments performed from January 31, 1984 through April 1998.² He also submitted the results of audiograms and tympanograms obtained by Edward Tomkin, D.O., on November 12, 2009 and February 24, 2011. In a letter dated November 18, 2009, Dr. Tomkin interpreted the results of the November 12, 2009 examinations. He diagnosed appellant with tinnitus, sensorineural high frequency hearing loss, chronic sinusitis, nasal polyps and allergic rhinitis. Dr. Tomkin stated that appellant had a history of noise exposure and wore hearing protection. He recommended the use of hearing protection and nasal saline lavage.

By letter dated August 31, 2011, OWCP requested that the employing establishment respond to inquiries regarding appellant's duties and noise exposure. On November 29, 2011 it also requested additional factual and medical evidence from appellant. OWCP afforded him 30 days to submit this additional evidence.

By letter dated October 27, 2011, the employing establishment stated that appellant had never worked in a hearing protection area or any area that could be considered a noisy work area. It stated that he had not returned a form that would identify areas within the employing establishment where he had been exposed to noisy work conditions. The employing establishment described the areas in which he worked as large bays filled with work benches where employees repair and refurbish small electronic equipment. It also stated that employees had access to hearing protection equipment of various forms.

By letter dated December 7, 2011, appellant described his duties as an electronics mechanic. He stated that he was exposed to high levels of noise for up to 35 hours a week in his work area. The sources of the noise in appellant's work area were power tools, amplifier equipment and the extremely loud hammering of sheet metal. He was exposed to high levels of noise in other work areas that he had to pass through from five to eight hours per week. Appellant noted that, while hearing protection was used while performing his work, it was not very effective, and that he was exposed to noise without hearing protection when away from his work area. While he hunted as a hobby, he wore hearing protection for all but two shots fired per year.

On December 21, 2011 the employing establishment stated that, while appellant may have gone into noisy areas during his workday, he did not spend enough time in them to exceed the time weighted averages established by the Occupational Health and Safety Administration (OSHA) to identify which noisy work areas could adversely affect a person's hearing. With the

² The last audiogram performed for appellant's former employing establishments in this series is erroneously dated as "98/04/98," so the exact date of this audiogram cannot be verified.

exception of the sheet metal areas, none of the areas mentioned by appellant in his December 12, 2011 letter were hearing protection areas.

By letter dated May 9, 2012, appellant's Congressional representative inquired about his case status.

By decision dated May 25, 2012, OWCP denied appellant's claim for compensation. It found that he had not established that he was exposed to hazardous noise in the performance of his duties or submitted medical evidence to establish that any hearing loss was causally related to his workplace exposure to noise. OWCP accepted that appellant was a federal civilian employee who filed a timely claim. By letter dated March 25, 2012, it provided his Congressional representative a copy of the decision.

On May 30, 2012 appellant, through his representative, requested a telephonic hearing. He noted that the December 21, 2011 statement of the employing establishment did not dispute his allegations about being exposed to loud noises, but stated only that appellant's work areas met OSHA standards. Counsel contended that, because the employing establishment did not dispute noise exposure, the May 25, 2012 should be set aside and appellant referred for a second opinion examination. He also sent eleven signed and dated statements from appellant's supervisor, work leader and coworkers, who agreed with his description of loud and constant noise exposure in the performance of his duties. A telephonic hearing was held on September 14, 2012.

By decision dated November 16, 2012, the hearing representative set aside the May 25, 2012 decision for further medical development.

By letters dated January 11 and 17, 2013, OWCP referred appellant to Dr. Philip G. Liu, a Board-certified otolaryngologist, for audiometric testing and an opinion on the relationship of any hearing loss to his exposure in federal employment. It included a statement of accepted facts regarding appellant's federal and nonfederal employment noise history.

In a report dated February 15, 2013, Dr. Liu reviewed appellant's history of exposure to hazardous noise and performed an otologic evaluation. Audiometric testing obtained on February 18, 2013 at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed the following decibel losses: right ear 10, 10, 10 and 20 decibels; left ear 10, 10, 10 and 25 decibels. The audiologist noted that the testing occurred at 9:30 a.m., and that the time of appellant's last exposure to loud noise was at least 16 hours before the examination. The audiological equipment had been calibrated on March 5, 2012.

Dr. Liu compared the audiometric test of January 21, 1984 with an evaluation obtained February 24, 2011 that showed good hearing in the low to mid frequencies but significant sloping from 4,000 to 6,000 Hz. He determined that appellant sustained tinnitus and sensorineural hearing loss more than 90 percent secondary to occupational noise trauma, stating that he attributed the diagnoses to appellant's occupational exposure of noise based on his analysis of hearing loss on the audiometric data available. Dr. Liu did not recommend hearing aids for appellant, but he did recommend continued noise protection, annual monitoring of

hearing levels, avoidance of predisposing factors to worsening hearing and treatment of a sinonasal condition to minimize Eustachian tube dysfunction problems.

By decision dated March 20, 2013, OWCP accepted appellant's claim for sensorineural hearing loss. It forwarded his case to an OWCP medical adviser in order to assess the percentage of permanent impairment.

An OWCP medical adviser reviewed the medical evidence and audiometric testing to determine if appellant's binaural sensorineural hearing loss was ratable for schedule award purposes. Using Dr. Liu's findings, the medical adviser calculated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a zero percent binaural hearing loss, or a zero percent loss in both the left and right ears. He stated that the date of maximum medical improvement was February 18, 2013 and that hearing aids were not authorized.

On April 23, 2013 appellant filed a Form CA-7 claim for a schedule award on the basis of his accepted binaural sensorineural hearing loss.

By decision dated May 2, 2013, OWCP denied appellant's claim for a schedule award. It found that his hearing loss was not severe enough to be considered ratable. OWCP also denied authorization for hearing aids on the grounds that the weight of the medical evidence established that appellant would not benefit from the devices.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing regulations⁴ 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.⁵ The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.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 Hz, 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* point out, losses below 25 decibels result in no impairment in the ability to hear

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

⁶ 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

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

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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

Further, the requirements of the evidence to be used in evaluating occupational hearing loss claims are defined by the Federal (FECA) Procedure Manual, which provides: that the employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; and a rationalized medical opinion regarding causal relationship.⁹

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.¹⁰ The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living (ADLs), including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹¹ A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that he has a ratable hearing loss.

Appellant's claim of occupational hearing loss was accepted by OWCP based on the report of Dr. Liu. An OWCP medical adviser properly applied OWCP's standardized procedures to the audiogram performed as part of Dr. Liu's February 15, 2013 report to arrive at a binaural impairment rating of zero percent.¹³ Test results for the frequency levels recorded at 500, 1,000,

⁸ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Specific Conditions*, Chapter 3.600.8(a); *Joshua A. Holmes*, 42 ECAB 231, 232 n.2 (1990).

¹⁰ See A.M.A., *Guides* 249 (6th ed. 2009).

¹¹ *Id.* *K.B.*, Docket No. 13-443 (issued May 10, 2013); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

¹² *Charles H. Potter*, 39 ECAB 645, 648 (1988).

¹³ See *B.V.*, Docket No. 07-718, (issued July 2, 2007).

2,000 and 3,000 Hz on the right revealed decibel losses of 10, 10, 10 and 20 decibels respectively, for a total of 50 decibels. This figure, when divided by four, results in an average hearing loss of 12.5 decibels. The average of 12.5 decibels, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 10, 10 and 25 decibels respectively, for a total loss of 55 decibels; 55 decibels divided by four results in an average of 13.75 decibels, which, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the left ear. As the monaural hearing loss rating was zero percent for both the left and right ears, the binaural hearing loss was also zero percent.

Dr. Liu compared audiological testing obtained in 1984 with audiometric information from 2011. He noted that the tests demonstrated good hearing in the low to mid frequencies (500 to 3,000 Hz) but significant sloping from 4,000 to 6,000 Hz. As noted, OWCP's medical adviser reviewed the February 18, 2013 testing, obtained as part of Dr. Liu's evaluation, to conclude that appellant did not have a ratable hearing loss. It too, documented good hearing in the low to mid frequencies with shifting at 4,000 Hz and above.

On appeal, appellant's representative argued that the medical adviser should have taken Dr. Liu's diagnosis of tinnitus into account when calculating impairment. The Board notes that a schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹⁴ Because appellant does not have a ratable hearing loss, the medical adviser did not consider tinnitus. Appellant's representative also argued that the case should be remanded as the audiometric testing was obtained following Dr. Liu's examination. The Board finds that the audiometric equipment was in compliance with all OWCP requirements at the time that appellant underwent examination. The audiometric test results were reviewed by the medical adviser and conform to the conclusion reached by Dr. Liu. The Board concludes that there is no other medical evidence conforming to OWCP's standards that supports a ratable hearing loss.

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.

ANALYSIS -- ISSUE 2

In this case, OWCP accepted that appellant sustained employment-related binaural sensorineural hearing loss. The record, however, does not support that hearing aids were recommended.

In a February 15, 2013 report, Dr. Liu, the referral physician, did not recommend hearing aids for appellant. He recommended continued noise protection, annual monitoring of hearing levels, avoidance of predisposing factors to worsening hearing and treatment of a sinonasal condition to minimize Eustachian tube dysfunction problems. In a November 18, 2009 letter, Dr. Tomkin had recommended the use of hearing protection and nasal saline lavage.

¹⁴ Charles H. Potter, *supra* note 12.

Dr. Liu did not recommend hearing aids for the treatment of appellant's condition nor did OWCP's medical adviser. Appellant has not met his burden of proof to establish that expenditure on a hearing aid would be incurred for treatment of the effects of an employment-related condition. OWCP did not abuse its discretion in denying authorization for hearing aids. The denial was not unreasonable based on the medical evidence of record. Should the need for hearing aids arise in the future appellant may file an appropriate claim at that time.

CONCLUSION

The Board finds that appellant has not established that he has a ratable hearing loss. The Board further finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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