

FACTUAL HISTORY

On October 11, 2012 appellant, then a 60-year-old conveyer car dumper operator, filed a notice of occupational disease (Form CA-2) alleging hearing loss due to factors of his federal employment. He first became aware of his hearing loss on September 18, 2009, and first realized that it was caused or aggravated by his employment on September 10, 2012.

By letter dated October 29, 2012, OWCP requested additional factual and medical evidence from appellant. It afforded him 30 days to submit the evidence. OWCP also requested that appellant's employing establishment respond to its inquiries regarding his duties and facts surrounding his injury.

Appellant responded by letter dated November 13, 2012, detailing his federal and nonfederal work history, his exposure to noise and his use of hearing protection during his employment and his hobbies involving exposure to loud noise. His employing establishment similarly responded, detailing his duties, noise exposure levels and use of hearing protection.

In a July 17, 2012 report, Dr. Susan P. Abernathy, a Board-certified otolaryngologist, noted appellant's exposure to high levels of noise at work. She diagnosed appellant with Eustachian tube dysfunction and serous otitis media of the left ear, citing tympanometry testing as well as examination of the ear as the basis for her diagnosis. In an August 9, 2012 report, Dr. Abernathy related that she had performed surgery on appellant to correct serous otitis media in his left ear.

In a January 29, 2013 report, Dr. Whitney R. Mauldin, an audiologist, for the employing establishment, stated that a May 23, 1994 hearing examination documented preexisting hearing loss of the left ear. He submitted employing establishment audiology reports dated September 18, 2009 to November 8, 2012.

On March 19, 2013 OWCP referred appellant to Dr. H. Grady Arnold, Jr., a Board-certified otolaryngologist. In a report dated April 10, 2013, Dr. Arnold reviewed appellant's history of noise exposure and performed an otologic evaluation. Audiometric testing obtained on April 2, 2013 at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed the following: right ear 25, 30, 15 and 30 decibels; left ear 25, 25, 25 and 40 decibels. Dr. Arnold determined that appellant sustained moderate high frequency sensorineural hearing loss in his right ear and mixed moderately severe sensorineural hearing loss in his left ear. He found that the sensorineural hearing loss was due to noise exposure in appellant's federal employment. Dr. Arnold stated that the pattern of appellant's audiogram was consistent with noise exposure and that he had increased hearing loss during his employment. He advised that no hearing aids were recommended for appellant.

On April 16, 2013 a district medical adviser (DMA) reviewed the medical evidence and audiometric testing to determine if appellant's bilateral sensorineural hearing loss was ratable for schedule award purposes and whether hearing aids should be authorized. The medical adviser concluded that, under the sixth edition of the A.M.A., *Guides*, appellant had no ratable impairment of the right ear and six percent impairment in the left ear. Hearing aids were not authorized.

By decision dated April 17, 2013, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. Because the medical evidence of record established that he did not require hearing aids, they were not authorized.

On April 23, 2013 appellant filed a claim for a schedule award based on his accepted bilateral sensorineural hearing loss.

By decision dated May 3, 2013, OWCP granted appellant a schedule award for a six percent permanent impairment of his left ear. The award ran for 3.12 weeks from April 2 to 23, 2013. OWCP based the award on Dr. Arnold's April 10, 2013 report and the April 16, 2013 report of its medical adviser.

LEGAL PRECEDENT -- ISSUE 1

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* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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 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.⁷

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, 385 (2006).

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

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

⁷ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

ANALYSIS -- ISSUE 1

The Board finds that appellant does not have more than a six percent hearing loss of the left ear.

Appellant's claim of occupational hearing loss was accepted by OWCP based on the report of Dr. Arnold, and an OWCP medical adviser. OWCP's standardized procedures were applied to Dr. Arnold's April 10, 2013 report to arrive at an impairment rating of six percent for the left ear. Test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz on the right side revealed decibel losses of 25, 30, 15 and 30 decibels respectively, for a total of 100 decibels. This figure, divided by four, resulted in an average hearing loss of 25 decibels. The average of 25 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 25, 25, 25 and 40 decibels respectively, for a total loss of 115 decibels. One hundred and fifteen decibels divided by four results in an average of 28.75 decibels, which when reduced by the 25 decibel fence and multiplied by 1.5, results in a 5.625 loss or a 6 percent monaural hearing loss of the left ear after rounding up. Appellant's binaural hearing loss, which OWCP's medical adviser did not calculate, would be one percent.⁸ There is no other medical evidence of record establishing greater loss under established OWCP procedures. The record of audiometric tests performed at the employing establishment from May 23, 1994 through November 8, 2012 does not meet the requirements of the evidence to be used in evaluating occupational hearing loss claims as defined by the Federal (FECA) Procedure Manual because the reports merely provide the results of each test.⁹ The hearing test reports provided, dated from September 18, 2009 to November 8, 2012, are similarly deficient for lacking one or more requirements.

Under FECA, the maximum award for monaural hearing loss is 52 weeks of compensation.¹⁰ Appellant is entitled to six percent of 52 weeks, or 3.12 weeks of

⁸ Following the standardized formula for calculating binaural hearing loss, appellant's lesser loss of zero percent in the right ear is multiplied by five, arriving at a figure of zero; then added to his greater hearing loss of six percent in the left ear, arriving at a figure of six; and finally divided by six, resulting in a rating of one percent binaural hearing loss. The maximum number of weeks of compensation for binaural hearing loss is 200 weeks. One percent of 200 weeks equals 2 weeks of compensation.

⁹ The Federal (FECA) Procedure Manual, provides that audiological testing should 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 the relationship. *Joshua A. Holmes*, 42 ECAB 231, 232 n.2 (1990).

¹⁰ The maximum number of weeks of compensation for hearing loss in one ear is 52 weeks. The Board finds that the hearing loss in appellant's left ear should be rounded to six percent, the nearest whole number. Six percent of 52 weeks equals 3.12 weeks of compensation. The right ear ratable loss of zero percent equals zero weeks of compensation. Since the monaural loss results in a greater number of weeks, OWCP properly based the award on monaural hearing loss. *See W.Z.*, Docket No. 11-1371 (issued January 6, 2012).

compensation, the amount granted in this case.¹¹ There is no medical evidence conforming to OWCP's standards that supports a greater impairment. Dr. Arnold's report complies with the requirements of the evidence to be used in evaluating occupational hearing loss claims as defined by FECA procedure manual. The DMA supported Dr. Arnold's findings. The Board finds that appellant has not established that he has more than a six percent hearing loss in the left ear.

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 or the period of disability or aid in lessening the amount of the monthly compensation.¹² In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA with the only limitation on OWCP's authority being that of reasonableness.¹³

ANALYSIS -- ISSUE 2

On appeal, appellant contests the denial of hearing aids. The Board finds that OWCP did not abuse its discretion by denying authorization for hearing aids.

In an April 10, 2013 report, Dr. Arnold, the referral physician, specifically found that hearing aids were not recommended for appellant. OWCP's medical adviser concurred in his opinion on April 16, 2013. No other probative medical evidence bearing on this issue was submitted.

Appellant also noted buzzing in his ears but Dr. Arnold did not rate any impairment to appellant's hearing due to tinnitus. In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA with the only limitation on OWCP's authority being that of reasonableness.¹⁴ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It

¹¹ The number of weeks of compensation awarded indicates that OWCP applied a six percent monaural hearing loss rating. The date of maximum medical improvement in this case is considered to be the date of the evaluation by the attending physician, Dr. Arnold, of April 2, 2013, which was accepted as definitive by OWCP in its decision. This is the effective date for commencing the schedule award.

¹² 5 U.S.C. § 8103; see *Thomas W. Stevens*, 50 ECAB 288, 289 (1999).

¹³ *James R. Bell*, 52 ECAB 416 (2001).

¹⁴ *Id.*

is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁵

OWCP did not abuse its discretion in denying authorization for hearing aids. The medical evidence of record does not establish that hearing aids were recommended. Should the need for hearing aids arise in the future, appellant may file an appropriate request at that time.¹⁶

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award for more than a six percent monaural impairment of his left ear. 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 3 and April 17, 2013 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 22, 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

¹⁵ *Minnie B. Lewis*, 53 ECAB 609 (2002).

¹⁶ *See Charlie A. Penney*, Docket No. 04-1432 (issued October 5, 2004).