

On appeal, appellant contends that he is entitled to a greater schedule award as a hearing test performed by a Dr. Tolen⁴ showed significant damage to his left ear.

FACTUAL HISTORY

On November 19, 2012 appellant, then a 58-year-old production and material support supervisor, filed an occupational disease claim alleging that on October 16, 2012 he first became aware of his hearing loss. He further alleged that on November 16, 2012 he first realized that his condition was caused by his exposure to noise from machinery at work.⁵

By letter dated February 12, 2013, OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kenneth J. Walker, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation to determine whether he had any employment-related noise-induced hearing loss.

In an April 8, 2013 medical report, Dr. Walker advised that, upon examination, appellant reported a history of onset of hearing loss over the past several years. Appellant also reported long-term exposure to machinery while working as a production and material support supervisor. He did not wear hearing protection at work. Dr. Walker set forth findings on examination and diagnosed mild noise-induced sensorineural hearing loss in the right ear, moderate noise-induced sensorineural hearing loss in the left ear and tinnitus. He opined that appellant's hearing loss was consistent in pattern with noise-induced hearing loss due, at least in part, to noise exposure during his federal employment. An audiometric test was conducted on the same day as Dr. Walker's examination. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of the right ear as 15, 20, 15 and 25, respectively. Testing at the same frequency levels noted above revealed decibel losses of 15, 20, 25 and 50, respectively, regarding the left ear. Dr. Walker recommended hearing conservation measures, annual audiograms and a hearing aid evaluation.

On May 9, 2013 OWCP's medical adviser reviewed Dr. Walker's April 2, 2013 otologic examination report. The medical adviser agreed that appellant had binaural sensorineural hearing loss. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and determined that appellant sustained four percent hearing loss of the left ear. Decibel losses for the right ear were totaled at 75 and divided by 4, to obtain the average hearing loss per cycle of 18.75. The 18.75 average was then reduced by the 25-decibel fence to equal 0 decibels, resulting in zero percent right monaural loss. Decibel losses for the left ear were totaled at 110 and divided by 4, to obtain the average hearing loss per cycle of 27.5. The 27.5 average was then reduced by the 25-decibel fence to equal 2.5 decibels, multiplied by 1.5 decibels, resulting in 3.75 or 4 percent right monaural loss. No percentage was added for tinnitus. The medical adviser stated that the date of maximum medical improvement was April 2, 2013, the date of Dr. Walker's examination and

⁴ The Board notes that appellant did not provide Dr. Tolen's complete name.

⁵ Appellant retired from the employing establishment effective January 1, 2013.

audiogram. Hearing aids were not authorized and an examination by a specialist was not recommended.

On May 13, 2013 OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On July 23, 2013 appellant filed a claim for a schedule award.

In a June 14, 2013 memorandum, the employing establishment controverted appellant's schedule award claim based on an accompanying memorandum and audiometric history from Dr. Captain Erin E. Artz, flight commander of the employing establishment's audiology department. In a memorandum of the same date, Dr. Artz reviewed appellant's audiological records and provided a history of the positions he held at the employing establishment from 1977 to 2012. He stated that from 1991 to 2012 appellant was not enrolled in the employing establishment's hearing conservation program as he was no longer exposed to hazardous noise as defined by an employing establishment safety and health regulations. Appellant's first hearing test on November 17, 1976 showed normal hearing thresholds in both ears. There was no change in his hearing while enrolled in the hearing conservation program through 1986. Appellant received a hearing examination outside of the hearing conservation program on November 16, 2012 that showed severe to profound hearing loss which was inconsistent with his ability to communicate effectively at normal conversational volume and without amplification of any kind consistent with nonorganic hearing loss. Dr. Artz stated that appellant reported at that time that his own provider had diagnosed him with severe hearing loss due to his exposure to hazardous workplace noise. An audiogram performed on the same day showed a mild-to-moderate high frequency sloping hearing loss in both ears that was consistent with presbycusis (aging of the auditory system). Dr. Artz stated that in 1977 appellant presented at the employing establishment with normal hearing in both ears which remained stable while he was assigned to a hearing conservation program through 1986. Thresholds obtained upon his retirement revealed mild-to-moderate high frequency hearing loss which was inconsistent with exposure to hazardous noise. According to the sixth edition of the A.M.A., *Guides*, Dr. Artz determined that appellant demonstrated no bilateral hearing impairment in 1986 and currently demonstrated a two percent bilateral hearing impairment.

In an August 7, 2013 decision, OWCP granted appellant a schedule award for four percent impairment of the left ear based on its medical adviser's opinion.

LEGAL PRECEDENT

The schedule award provision of FECA⁶ 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 under the law, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to

⁶ 5 U.S.C. §§ 8101-8193.

all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁸

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁹ 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* 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.¹⁰ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted appellant's claim for binaural sensorineural hearing loss. Appellant received a schedule award for four percent impairment to the left ear. The Board finds that he did not meet his burden of proof to establish that he sustained greater impairment to the left ear.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Walker, a Board-certified otolaryngologist, for a second opinion evaluation to determine the extent and degree of any employment-related hearing loss. An audiogram was completed on April 2, 2013 which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 15, 20, 15 and 25, respectively, for the right ear and 15, 20, 25 and 50, respectively, for the left ear. Dr. Walker

⁷ 20 C.F.R. § 10.404.

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁹ A.M.A., *Guides* 250 (6th ed. 2009).

¹⁰ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

¹¹ *J.H.*, *supra* note 10; *J.Q.*, 59 ECAB 366 (2008); *Robert E. Cullison*, 55 ECAB 570 (2004). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (January 2010).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

diagnosed mild noise-induced hearing loss in the right ear, moderate noise-induced hearing loss in the left ear as a result of appellant's federal workplace noise exposure. He diagnosed tinnitus, but did not provide any indication that it was employment related. Dr. Walker recommended hearing aids.

OWCP then properly referred the medical record to its medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.¹³ On May 9, 2013 OWCP's medical adviser reviewed the otologic and audiologic testing performed on appellant on April 2, 2013 and properly applied the applicable standards of the A.M.A., *Guides*, to find that appellant had 3.75 percent impairment of the left ear, which he properly rounded up to determine that appellant had 4 percent hearing loss.¹⁴ There is no other medical evidence of record establishing greater loss under established OWCP procedures. Based on Dr. Artz's June 14, 2013 report, OWCP controverted the claim. Dr. Artz indicated that appellant was not enrolled in a hearing conservation program from 1991 to 2012 and his exposure is inconsistent with exposure to hazardous noise.

The Board finds that OWCP properly relied on its medical adviser's opinion, based on the clinical findings of Dr. Walker, to find that appellant has no more than four percent hearing loss in the left ear, for which he has received a schedule award.

On appeal, appellant contended that he has more than four percent impairment to the left ear as a hearing test performed by Dr. Tolen showed significant damage to his left ear. The case record, however, does not contain such a test.

Appellant also submitted new evidence on appeal. However, the Board lacks jurisdiction to review such evidence for the first time on appeal.¹⁵

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 is entitled to a schedule award for more than four percent monaural, left ear, loss of hearing.

¹³ *Id.*

¹⁴ *See supra* note 11.

¹⁵ 20 C.F.R § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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