

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

R.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE, OGDEN
UTAH -- OAMA,
RANDOLPH AIR FORCE BASE, TX, Employer**

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**Docket No. 14-131
Issued: April 25, 2014**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2013 appellant filed a timely appeal from an October 15, 2013 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 sustained more than a two percent monaural right ear hearing loss for which he received a schedule award.

FACTUAL HISTORY

On November 27, 2012 appellant, then a 59-year-old aircraft mechanic supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss as a

¹ 5 U.S.C. § 8101 *et seq.*

result of his federal employment duties. He reported that he worked in a high aircraft noise repair facility and was exposed to noise from aircraft, ratchets, rivet guns, air compressors and hydraulic mules from 1978 to the present. Appellant first became aware of his condition and of its relationship to his employment on July 30, 2001. He notified his supervisor on November 27, 2012.

Audiograms and hearing conservation data were submitted for the period of June 6, 1974 to October 15, 2012.

On November 27, 2012 appellant filed a claim for a schedule award (Form CA-7).

OWCP referred appellant to Dr. Robert L. Moesinger, a Board-certified otolaryngologist, for a second opinion evaluation on May 6, 2013. It provided a statement of accepted facts addressing appellant's federal work duties as an aircraft mechanic from 1978 to the present and noted that he was exposed to employment-related noise between one to eight hours a day. An audiogram was completed on May 6, 2013 which revealed the following decibels (dBA) losses at 500, 1,000, 2,000 and 3,000 Hertz (Hz): 20, 10, 20 and 55 for the right ear and 15, 10, 15 and 30 for the left ear. Speech reception thresholds were 20 dBA on the right and 15 dBA on the left and auditory discrimination scores were 100 percent bilaterally. Dr. Moesinger referenced appellant's December 12, 1979 audiogram and reported that appellant had normal hearing in the beginning of his federal employment. He compared the 1979 audiogram to appellant's current May 6, 2013 audiogram and found that appellant suffered from noise-induced hearing loss which was caused by his workplace exposure. Dr. Moesinger diagnosed bilateral moderate to severe neurosensory hearing loss most consistent with noise exposure from over 35 years of work as an aircraft mechanic. He noted that appellant had difficulty understanding conversations and recommended hearing aids.

OWCP referred the case file together with Dr. Moesinger's report to Dr. Morley Slutsky, a district medical adviser (DMA), to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement. In a report dated May 22, 2013, Dr. Slutsky reviewed the record but did not find a copy of the second opinion physician's May 6, 2013 audiogram. He also noted that the dBA value in the right ear at 2,000 Hz was not legible. Dr. Slutsky opined that appellant had zero percent binaural hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² He stated that if more information became available, he could revise his opinion. The date of maximum medical improvement was noted as May 6, 2013.

By decision dated June 21, 2013, OWCP accepted appellant's claim for bilateral hearing loss. It found that his bilateral hearing loss was not severe enough to be considered ratable and denied a schedule award claim.

On August 22, 2013 OWCP again referred the case file to Dr. Slutsky to determine the extent of appellant's permanent partial impairment. It noted that appellant's claim was accepted for noise induced bilateral hearing loss and provided the physician with the missing May 6, 2013 audiogram.

² A.M.A., *Guides*.

In an August 23, 2013 report, Dr. Slutsky diagnosed work-related binaural sensorineural hearing loss. Using the sixth edition of the A.M.A., *Guides*, he averaged appellant's left ear hearing levels of 15, 10, 15 and 30 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 70. Dr. Slutsky then subtracted a 25-dBA fence and multiplied the balance of -7.5 by 1.5 to find -- 11.25 percent left ear monaural hearing loss. He then averaged appellant's right ear hearing levels of 20, 10, 20 and 55 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 26.25. After subtracting out a 25-dBA fence, Dr. Slutsky multiplied the remaining 1.25 balance by 1.5 to calculate a 1.875 percent right ear monaural hearing loss. He did not list any impairment due to tinnitus. Dr. Slutsky calculated .3 percent binaural hearing loss by multiplying the lesser left ear loss of 0 percent by 5, adding the greater 2 percent right ear loss (rounded up from 1.875) and dividing this sum by 6.³ He recommended hearing aids and noted the date of maximum medical improvement as May 6, 2013.

By decision dated August 28, 2013, OWCP accepted appellant's claim for noise-induced bilateral hearing loss and informed him that he was entitled to a schedule award for permanent partial impairment of his hearing loss. Appellant was informed that the medical evidence established that he would benefit from hearing aids. OWCP noted that the August 28, 2013 decision superseded the June 21, 2013 decision.

By decision dated October 15, 2013, OWCP granted appellant a schedule award for two percent monaural hearing loss of the right ear. The award covered a period of 1.04 weeks from May 6 to 13, 2013.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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 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.⁵

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 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied

³ The .3 percent binaural hearing loss is rounded down to 0.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ See A.M.A., *Guides* 250.

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.⁷

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.⁸ 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.⁹

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.¹⁰ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹¹

ANALYSIS

The issue is whether appellant has more than a two percent monaural right ear hearing loss for which he received a schedule award.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Moesinger, a Board-certified otolaryngologist, for a second opinion evaluation. An audiogram was completed on May 6, 2013 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 10, 20 and 55 for the right ear and 15, 10, 15 and 30 for the left ear. Dr. Moesinger diagnosed bilateral moderate-to-severe neurosensory hearing loss most consistent with noise exposure from over 35 years of work as an aircraft mechanic. He noted that appellant had difficulty understanding conversations and recommended hearing aids.

OWCP then referred the medical evidence to Dr. Slutsky, a district medical adviser, for a permanent impairment rating in accordance with the A.M.A., *Guides*.¹² In a May 22, 2013 report, Dr. Slutsky opined that appellant had zero percent binaural hearing loss but noted that he was not provided a copy of the May 6, 2013 audiogram and the dBA value in the right ear at

⁷ See *E.S.*, 59 ECAB 249 (2007); *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁸ See *supra* note 6 at 249.

⁹ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹¹ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

¹² See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

2,000 Hz was not legible. By decision dated June 21, 2013, OWCP accepted appellant's claim for bilateral hearing loss but denied his schedule award claim finding that his bilateral hearing loss was not severe enough to be considered ratable.

On August 22, 2013 OWCP rerouted the case file to Dr. Slutsky and provided him with the missing requested May 6, 2013 audiogram to determine the extent of appellant's permanent partial impairment.

On August 23, 2013 Dr. Slutsky applied the findings of the May 6, 2013 audiogram to calculate two percent monaural right ear hearing loss.¹³ Using the sixth edition of the A.M.A., *Guides*, he averaged appellant's left ear hearing levels of 15, 10, 15 and 30 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 70. Dr. Slutsky then subtracted a 25-dBA fence and multiplied the balance of -7.5 by 1.5 to find -11.25 loss, equivalent to a zero percent monaural hearing loss of the left ear. He then averaged appellant's right ear hearing levels of 20, 10, 20 and 55 dBA at 500, 1,000, 2,000 and 3,000 Hz, which totaled 26.25. After subtracting out a 25-dBA fence, Dr. Slutsky multiplied the remaining 1.25 balance by 1.5 to calculate a 1.875 loss or a two percent monaural hearing loss of the right ear after rounding up. He did not list any impairment due to tinnitus. Dr. Slutsky then calculated .3 percent binaural hearing loss (rounded down to 0) by multiplying the lesser left ear loss of 0 percent by 5, adding the greater 2 percent right ear loss (rounded up from 1.875) and dividing this sum by 6.¹⁴ He recommended hearing aids and noted the date of maximum medical improvement as May 6, 2013.

The Board finds that Dr. Slutsky properly applied the A.M.A., *Guides* in calculating appellant's impairment rating and OWCP correctly relied on his opinion to find that appellant sustained two percent monaural hearing loss of the right ear.¹⁵ The Board finds that there is no evidence in the record of greater impairment.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.¹⁶ FECA provides that a claimant is entitled to 52 weeks of compensation for a 100 percent loss of hearing in one ear and 200 weeks compensation for 100 percent hearing loss in both ears. Multiplying two percent by 52 weeks provided for right ear monaural hearing loss results in a total of 1.04, the number of weeks OWCP authorized for payment of appellant's schedule award. Thus, the Board finds that OWCP properly determined the number of weeks of compensation.

In its October 15, 2013 decision, OWCP stated that appellant was entitled to \$1,289.14 in schedule award compensation for the period May 6 to 13, 2013. This was based on multiplying

¹³ *Supra* note 8.

¹⁴ *Id.*

¹⁵ *See Linda Beale, 57 ECAB 429 (2006).*

¹⁶ 5 U.S.C. § 8107.

appellant's weekly pay rate of \$1,652.74 by the 75 percent augmented compensation rate which totaled \$1,239.56, resulting in a payment of \$1,289.14.¹⁷

With respect to the specific period for payment of the 1.04 weeks of compensation, this is based on the date of maximum medical improvement which occurred on May 6, 2013, the date of appellant's audiogram. The determination of the date for maximum medical improvement ultimately rests with the medical evidence¹⁸ and is usually considered to be the date of the evaluation by the physician which is accepted as definitive by OWCP.¹⁹ The Board finds that OWCP properly determined the period of the award for 1.04 weeks from May 6 to 13, 2013.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than two percent monaural hearing loss to the right ear in the performance of duty.

¹⁷ The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents, as in this case, as defined in FECA, the employee is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent for a total of 75 percent of monthly pay. 5 U.S.C. § 8110(b). The number of weeks of compensation for a schedule award is determined by the compensation schedule found in section 8107(c) of FECA. 5 U.S.C. § 8107(c); *Dennis R. Stark*, Docket No. 05-1826 (issued January 10, 2006).

¹⁸ *L.H.*, 58 ECAB 561 (2007).

¹⁹ *Mark Holloway*, 55 ECAB 321, 325 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2014
Washington, DC

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

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

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