

FACTUAL HISTORY

On February 28, 2005 appellant, then a 56-year-old retired senior customs inspector, filed an occupational disease claim alleging hearing loss attributed to 56 incidents wherein he was exposed to hazardous noise. He retired from federal employment July 26, 2002. OWCP accepted that appellant suffered binaural noise-induced hearing loss as a result of exposure to noisy working conditions on or about July 19, 2002. By decision dated January 13, 2009, it awarded him 24.7 percent bilateral hearing loss.³ OWCP also recalculated appellant's weekly pay rate for schedule award purposes and paid an adjustment to him in the amount of \$1,209.42 as a result of the corrected pay rate.

On January 26, 2009 appellant requested a review of the written record. His argument concerned whether OWCP's medical adviser used the proper audiogram to ascertain the degree of his permanent hearing impairment. By decision dated May 19, 2009, an OWCP hearing representative affirmed the January 13, 2009 decision.

On November 18, 2013 appellant filed a Form CA-7 claim for an increased schedule award along with an occupational disease claim. He alleged that his hearing ability had deteriorated markedly over the past year as demonstrated by audiograms dated April 3 and June 3, 2013. Appellant also alleged that he had been subjected to continuous hearing trauma through sudden, unanticipated blasts of loud noise amplified by his OWCP-provided hearing aids. No audiograms or medical reports regarding his hearing condition were provided.

In a December 16, 2013 letter, OWCP advised appellant that, in order to take further action with respect to his schedule award claim, it required a medical report from a physician establishing that he reached maximum medical improvement. It also required an opinion on permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).⁴ Appellant was accorded 30 days to submit the requested information.

In a December 24, 2013 statement, appellant asserted that he had sent a package to OWCP containing a June 3, 2013 report from Dr. Andrew G. Berman, a Board-certified otolaryngologist, along with the results of a June 3, 2013 audiogram.

The record reflects that on December 2, 2013 OWCP had received a June 3, 2013 report from Dr. Berman along with a June 3, 2013 audiogram. Dr. Berman opined that appellant had 35.63 percent binaural hearing loss impairment and mild tinnitus attributable to the cumulative noise trauma he incurred during his federal employment.

In a March 21, 2014 report, Dr. David N. Schindler, a Board-certified otolaryngologist serving as OWCP's medical adviser, reviewed appellant's medical records pertaining to his

³ Under claim number xxxxxx590, appellant filed an occupational disease claim for hearing loss on August 23, 2001. The claim was accepted for binaural noise-induced hearing loss and, by decision dated June 25, 2002, OWCP paid appellant a schedule award for 12.5 percent binaural hearing loss. That amount was deducted from the 24.7 percent award in the current claim and appellant was awarded the difference or 12.2 percent. Claim number xxxxxx908 was combined with the current case, with the current claim as the master file.

⁴ A.M.A., *Guides* (6th ed. 2008).

hearing loss, including Dr. Berman's June 3, 2013 report and audiogram. Dr. Schindler opined that progressive hearing loss after removal from hazardous noise was not the result of previous noise exposure; therefore, he opined that Dr. Berman's audiogram of June 3, 2013 was not applicable. He stated that hearing loss that progresses after retirement is the result of metabolic disease, presbycusis or vascular processes. Dr. Schindler further noted that Dr. Berman had performed a videonystagmography in his evaluation which is not applicable to this case as dizziness is not associated with noise-induced hearing or injury from federal appointment. He noted that, while tinnitus was present, it was not described as impinging on activities of daily living and, therefore, was not rated. Dr. Schindler opined that there was no change in appellant's work-related hearing loss impairment of 24.7 percent binaural hearing loss. He opined, however, that appellant was a candidate for hearing aids in both ears.

By decision dated March 31, 2014, OWCP denied entitlement to an additional schedule award. It found the medical evidence did not support an increase in the impairment already compensated.

LEGAL PRECEDENT

The schedule award provision of FECA,⁵ and its implementing federal regulations,⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For decisions after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used to calculate schedule awards.⁸

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 and averaged.⁹ The fence of 25 decibels is then 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.¹⁰ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹¹ 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

⁵ *Supra* note 1.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ A.M.A., *Guides*, *supra* note 5 at 250.

¹⁰ *Id.*

¹¹ *Id.*

arrive at the amount of the binaural hearing loss.¹² The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹³

ANALYSIS

On August 29, 2007 appellant received a schedule award for 24.7 binaural hearing loss. He requested a schedule award based on increasing hearing loss and submitted Dr. Berman's June 3, 2013 medical report and a June 3, 2013 audiogram, which showed an increased hearing loss. Dr. Berman opined that this hearing loss was due to his federal exposure. The Board has duly considered the matter and finds that this case is not in posture for decision.

The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment.¹⁴ The Board has also recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.¹⁵ In *Adelbert E. Buzzell*,¹⁶ the Board cautioned against an OWCP medical adviser providing a blanket unrationalized statement that hearing loss does not progress following the cessation of hazardous noise exposure.¹⁷

The Board finds that OWCP did not properly develop the medical evidence in this claim. The claims examiner relied upon OWCP medical adviser's findings that appellant's increased hearing loss was not due to his federal employment because he retired in 2002. While the medical adviser generalized that progression of hearing loss after retirement was the result of metabolic disease, presbycusis or vascular processes, he did not provide a well-reasoned opinion and relate that opinion to appellant's specific situation. This generalization is insufficient to deny an increased schedule award claim. On remand, OWCP should refer appellant and the case file to a second opinion otolaryngologist for a fully-rationalized opinion regarding whether appellant developed increased hearing loss as a result of his federal employment noise exposure.¹⁸

¹² *Id.* at 251.

¹³ *Horace L. Fuller*, 53 ECAB 775 (2002).

¹⁴ *Paul R. Reedy*, 45 ECAB 488 (1994).

¹⁵ *J.R.*, 59 ECAB 710, 713 (2008).

¹⁶ 34 ECAB 96 (1982).

¹⁷ Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 3.700.4(b)(3) (January 2010) notes that, if the progression of a noise-induced hearing loss is to be denied, the medical adviser must provide a well-reasoned opinion.

¹⁸ *D.B.*, Docket No. 14-1269 (issued September 18, 2014); *T.R.*, *supra* note 16.

The Board also notes that it is OWCP's policy to round the calculated percentage of impairment to the nearest whole number.¹⁹ The current award does not reflect an award which has been rounded to the nearest whole number.

Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's occupational disease claim.²⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2014 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: December 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁹ See *L.B.*, Docket No. 14-479 (issued August 6, 2014); *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). See Federal (FECA) Procedure Manual, *supra* note 17 at Chapter 3.700.4(b)(2)(b) (September 2010).

²⁰ In light of the disposition of this case, appellant's arguments on appeal will not be addressed.