United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 14-1773**
	)	**Issued: December 8, 2014**
DEPARTMENT OF THE AIR FORCE, HOLLOMAN AIR FORCE BASE, NM, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2014 appellant filed a timely appeal from a February 25, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 nine percent monaural (left ear) hearing loss, for which he received a schedule award.

FACTUAL HISTORY

On October 26, 2010 appellant, then a 50-year-old lead firefighter, filed an occupational disease claim alleging that on April 1, 1995 he first became aware of his bilateral hearing loss

[1] 5 U.S.C. § 8101 *et seq.*

and first realized that his condition was caused by his exposure to noise at work. He was last exposed to the condition alleged to have caused his illness on October 29, 2010.

Appellant submitted employee hearing evaluation reports and audiograms dated April 26, 1995 to May 12, 2010.

In a December 22, 2010 letter, the employing establishment described appellant's exposure to noise for 31 years, 12 to 14 hours a day, and 3 to 4 days a week while working as a firefighter. Appellant was issued hearing protection. He retired from the employing establishment as of November 1, 2010.[2]

By letter dated January 10, 2011, QTC Medical Services, the medical appointment scheduler for OWCP, notified appellant that he was scheduled for an appointment with Dr. Ronald J. Blumenfeld, a Board-certified otolaryngologist, for a second opinion. The examination was to determine the relationship between appellant's claimed condition and his federal employment.

In a January 25, 2011 report, Dr. Blumenfeld listed examination findings and diagnosed sensorineural hearing loss. He opined that appellant's condition was due to noise exposure encountered during his federal civilian employment and advised that appellant may need hearing aids in the future. An audiogram performed on Dr. Blumenfeld's behalf on January 25, 2011 reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) and revealed the following decibel (dBA) losses: 5, 5, 10, and 35 for the right ear and 10, 5, 30, and 65 for the left ear, respectively. The audiogram stated that appellant had tinnitus.

On February 2, 2011 an OWCP medical adviser reviewed Dr. Blumenfeld's report and audiometric findings. He found that maximum medical improvement was reached on January 25, 2011, the date of Dr. Blumenfeld's examination. The medical adviser opined that appellant had an employment-related binaural sensorineural hearing loss and recommended hearing aids for both ears. He calculated that appellant had 3.75 percent monaural hearing loss in the left ear and no ratable hearing loss in the right ear, resulting in a 0.6 percent binaural hearing impairment under Table 11-1 and Table 11-2 on pages 250 and 252, respectively, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On February 4, 2011 OWCP accepted that appellant sustained binaural hearing loss due to occupational noise exposure.[3]

On February 11, 2011 appellant filed a claim for a schedule award.

On February 4, 2011 OWCP requested that Dr. Blumenfeld discuss appellant's tinnitus and whether this condition impacted his activities of daily living (ADL) for impairment purposes. In a March 1, 2011 report, Dr. Blumenfeld advised that appellant had a high frequency sensorineural hearing loss in the left ear with profound tinnitus that impacted his ADL. He

[2] A Standard Form 50-B Notification of Personnel Action indicated that appellant retired from the employing establishment effective October 31, 2010.

[3] On March 29, 2011 OWCP authorized hearing aids for appellant's bilateral hearing loss.

stated that he could not measure the extent of impairment due to tinnitus. Dr. Blumenfeld stated that appellant's description of this condition as bothersome must be accepted.

In a September 28, 2011 statement, appellant related that hearing aids had helped his long-standing bilateral high frequency hearing loss, but not his tinnitus condition which was more severe in his left ear. Tinnitus which made it difficult for him to communicate with others, sleep, and enjoy his favorite sports of archery and hunting. Appellant stated that this condition made his life miserable because he was irritable and could not concentrate on anything, but the ringing in his ears. He was constantly under stress due to this condition. Appellant rated his tinnitus as more than 20 on a Glascow Coma Scale of 1 to 10.

On September 10, 2013 OWCP requested that the prior OWCP medical adviser review appellant's September 28, 2011 statement and provide an impairment rating for his tinnitus condition. It noted that Dr. Blumenfeld was asked to provide a tinnitus impairment rating, but he failed to do so.

In a September 12, 2013 report, OWCP medical adviser recommended an additional five percent impairment for tinnitus of the left ear as described by appellant under section 11.2b on page 249 of the sixth edition of the A.M.A., *Guides*. He calculated a final impairment rating of 8.75 percent impairment for the left ear (3.75 percent left hearing loss impairment +5 percent impairment for tinnitus), rounded up to 9 percent.

In a September 18, 2013 decision, OWCP granted appellant a schedule award for a nine percent left monaural hearing impairment. The date of maximum medical improvement was listed as January 25, 2011. The award ran for a total of 4.68 weeks from January 25 to February 26, 2011.

In a statement dated December 9, 2013, appellant requested reconsideration. He contended that all the evidence he submitted was not reviewed by OWCP. Appellant disagreed with the period of the schedule award, stating that the date of injury was April 1, 1995 and the records he submitted dating back to August 4, 2003 indicated an "H-2" symmetric hearing loss. He noted that an OWCP medical adviser's report found that he had significant hearing loss in both ears and recommended authorization of hearing aids for both ears, but the report also stated that he had no ratable impairment in the right ear and only provided an impairment rating for tinnitus of the left ear. Appellant contested the use of the January 25, 2011 audiogram, noting that records dating back to November 5, 2007 showed significant hearing loss.

Appellant submitted employee hearing evaluation reports and audiograms dated January 10, 2007 to July 28, 2010.

In a February 25, 2014 decision, OWCP denied modification of the September 18, 2013 decision. The evidence submitted was insufficient to establish appellant's entitlement to a greater schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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.[6] The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[7]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[8] Using the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz), the losses at each frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs 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.[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 ADL, 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]

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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

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

[7] 20 C.F.R. § 10.404; *see F.D.*, Docket No. 09-1346 (issued July 19, 2010).

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

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

[10] *See* A.M.A., *Guides* 249.

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

providing rationale for the percentage of impairment specified.[12] It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[13]

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury.[14] The Board has explained that maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.[15] The determination of the date of maximum medical improvement is factual in nature and depends primarily on the medical evidence.[16] The date of maximum medical improvement is usually considered to be the date of the evaluation accepted as definitive by OWCP.[17]

ANALYSIS

OWCP accepted that appellant sustained binaural hearing loss due to employment-related noise exposure. Appellant received a schedule award for a nine percent left monaural hearing impairment. The Board finds that appellant failed to establish greater permanent hearing loss impairment.

On January 25, 2011 Dr. Blumenfeld, an OWCP referral physician, found that appellant had sensorineural hearing loss due to his work-related noise exposure. He advised that appellant may need hearing aids in the future. An audiogram completed on January 25, 2011 revealed the following dBA losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 5, 10, and 35 for the right ear and 10, 5, 30, and 65 for the left ear, respectively. The audiogram stated that appellant had tinnitus.

OWCP then properly routed the medical file to an OWCP medical adviser, for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*.[18] On February 2, 2011 the medical adviser applied the findings of the January 25, 2011 audiogram to calculate 3.75 percent monaural hearing loss in the left ear and no ratable hearing loss in the right ear. Testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBA losses of 10, 5, 30, and 65 on the left, for a total of 110 dBA. When divided by four, this averaged 27.5. The medical adviser then subtracted a 25-dBA fence and multiplied the balance of 2.5 by 1.5 to find 3.75 percent left ear monaural hearing loss. The frequency levels on the right revealed dBA losses 5, 5, 10, and 35, for a total of 55. When divided by four, this averaged

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

[13] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

[14] *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

[15] *Id.*

[16] *J.B.*, Docket No. 11-1469 (issued February 14, 2012); *Franklin L. Armfield*, 28 ECAB 445 (1977).

[17] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.a (January 2010); *see Richard Larry Enders*, 48 ECAB 184 (1996) (the date of maximum medical improvement was the date of the audiologic examination used as the basis of the schedule award).

[18] *See supra* note 12.

13.75. This average loss was then reduced by a 25-dBA fence to equal a negative figure. Because this average is below the fence of 25 dBA, appellant is deemed to have no impairment in his ability to hear every day sounds under everyday listening conditions with regard to his right ear.[19] The Board finds that the medical adviser properly applied the A.M.A., *Guides* in calculating that appellant had a 3.75 percent ratable impairment of the left ear and no ratable impairment of the right ear.

On March 1, 2011 Dr. Blumenfeld advised that while appellant had a high frequency sensorineural hearing loss in the left ear with profound tinnitus that impacted his ADL, he could not measure the extent of impairment due to tinnitus.

On September 10, 2013 OWCP rerouted the case file to OWCP medical adviser and provided him with appellant's September 28, 2011 statement describing the impact of tinnitus on his ADL to determine the extent of his permanent impairment due to this condition.

On September 12, 2013 the medical adviser found additional left ear impairment due to tinnitus. As Dr. Blumenfeld and appellant indicated that tinnitus affected his ADL, the medical adviser properly added five percent for tinnitus.[20] The Board finds that the medical adviser properly applied the A.M.A., *Guides* in calculating that appellant sustained 8.75 percent impairment for a left monaural hearing loss (3.75 percent left hearing loss impairment +5 percent impairment for tinnitus) which was rounded to 9 percent by OWCP in computing the final percentage impairment for award purposes.[21]

The Board finds that there is no other medical evidence of record establishing greater loss under OWCP procedures. The audiograms submitted by appellant do not meet the requirements of evidence to be used in evaluating occupational hearing loss claims as under the Federal (FECA) Procedure Manual, as they merely provide a graphical representation of the results of the test.[22]

The Board further finds that OWCP properly determined the date of maximum medical improvement. As noted, the date of maximum medical improvement is usually considered to be

[19] *See L.F.*, Docket No. 10-2115 (issued June 3, 2011).

[20] *See supra* notes 10 and 11.

[21] OWCP procedures provide that in computing hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, *supra* note 17 at Chapter 3.700.4b(2)(b) (January 2010).

[22] 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 the relationship. *Supra* note 17 at Chapter 3.600, *Requirements for Medical Reports*, Exhibit No. 4 (April 1996).

the date of the medical examination that determined the extent of the impairment.[23] OWCP used January 25, 2011 as the date of maximum medical improvement in its schedule award determination. That was the date Dr. Blumenfeld conducted a second opinion evaluation. That was also the date an audiologist performed an audiogram. On February 2, 2011 OWCP medical adviser confirmed that the date of maximum medical improvement was January 25, 2011, the date of Dr. Blumenfeld's report and the audiologic examination. For these reasons, the Board finds that OWCP properly identified the date of maximum medical improvement as January 25, 2011 and that the period of appellant's schedule award should begin that date.

Appellant may request a 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 no more than a nine percent left monaural hearing loss, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[23] *See supra* note 17.