

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

W.H., Appellant	)	
	)	
and	)	<b>Docket No. 13-1470</b>
	)	<b>Issued: January 6, 2014</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD,</b>	)	
<b>Bremerton, WA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 7, 2013 appellant filed a timely appeal from a March 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his schedule award claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a ratable hearing loss warranting a schedule award.

**FACTUAL HISTORY**

On September 27, 2012 appellant, then a 73-year-old former electrician, filed an occupational disease claim alleging hearing loss causally related to factors of his federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment. He was last exposed to the factors alleged to have caused his condition on October 30, 1998, the date that he retired.

In a report dated August 1, 2012, Dr. Richard W. Seaman, a Board-certified otolaryngologist, discussed appellant's history of noise exposure and complaint of loss of hearing and tinnitus. He found that an audiogram dated July 30, 2012 revealed moderate-to-severe high frequency hearing loss bilaterally. Dr. Seaman diagnosed bilateral sensorineural hearing loss and tinnitus and stated that the hearing loss was "likely due to a combination of industrial noise damage, [a] possible contribution from engine from exposure in the Navy, and at age 73, presbycusis." He recommended hearing aids.

The employing establishment submitted audiograms from 1987 to 1998 under its noise conservation program. An audiogram dated October 26, 1998, revealed losses of 5, 5, 25 and 55 decibels on the right at 500, 1,000, 2,000 and 3,000 Hertz (Hz) respectively and losses of 10, 10, 10 and 55 decibels on the left at 500, 1,000, 2,000 and 3,000 Hz, respectively.

On January 14, 2013 OWCP provided Dr. Seaman with a statement of accepted facts detailing appellant's occupational noise exposure. It requested that he complete an otologic evaluation form.

In a report dated January 22, 2013, Dr. Seaman related that a review of a December 10, 1982 audiogram revealed that appellant had hearing loss prior to beginning work with the employing establishment. He stated:

"I noted [the] audiogram dated October [26], 1998 would have been close to the time of retirement.<sup>2</sup> That audiogram appears accurate and was done by a qualified audiologist. That audiogram shows some change in hearing from the original audiogram to that audiogram. That hearing change was all in high frequencies at 4,000 cycles and above. Therefore, in the frequencies normally used for rating purposes there was no significant change that was not well within test/retest variation. Hearing loss beyond the time of retirement in 1998 would have been due to presbycusis. Hearing loss demonstrated in 1998 was not ratable."

Dr. Seaman concluded that the portion of appellant's hearing loss due to his federal civilian employment was "minimal and only in higher frequencies 4,000 cycles and above." Hearing aids were recommended as noted at the start of his federal civilian employment.

In a January 28, 2013 form, Dr. Seaman related that audiometric testing conducted on July 30, 2012 recorded levels of 15, 25, 65 and 75 decibels on the right at 500, 1,000, 2,000 and 3,000 Hz respectively and 20, 75, 65 and 70 decibels on the left at 500, 1,000, 2,000 and 3,000 Hz, respectively. He advised on the form that the hearing loss was due to noise exposure in part or in whole to noise exposure in appellant's federal employment.

On February 8, 2013 OWCP accepted appellant's claim for bilateral sensorineural hearing loss. On February 19, 2013 appellant requested a schedule award.

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<sup>2</sup> Dr. Seaman indicated that the audiogram was dated October 14, 1998 rather than October 26, 1998; however, this appears to be a typographical error.

On February 13, 2013 an OWCP medical adviser reviewed the July 30, 2012 audiogram and opined that appellant had a 30 percent binaural hearing loss. On March 20, 2013 he reviewed the October 26, 1998 audiogram and found that it revealed no ratable hearing loss. The medical adviser concurred with Dr. Seaman's finding that appellant did not have a ratable hearing loss before retirement and that the increase in hearing loss after his employment ceased did not result from noise exposure.

By decision dated March 26, 2013, OWCP denied appellant's claim for a schedule award. It found that his ratable hearing loss developed after retirement and was not causally related to his work exposure. OWCP authorized hearing aids.

On appeal appellant contends that he believed that he had a ratable hearing loss at the time of his retirement in 1998.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations<sup>4</sup> 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.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> 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

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> A.M.A., *Guides* 250.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

amount of the binaural hearing loss.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

Regarding progression of hearing loss, OWCP's procedures provide, "Noise-induced hearing loss does not typically progress after exposure to noise ceases. A claimant with an audiogram showing less than a 25-decibel loss soon after exposure ceases and a second audiogram showing a ratable loss may be denied if the DMA [district medical adviser] provides a well-reasoned opinion."<sup>12</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral sensorineural hearing loss and authorized hearing aids. The issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides* warranting a schedule award. In a report dated August 1, 2012, Dr. Seaman reviewed appellant's history of noise exposure. He diagnosed tinnitus and bilateral sensorineural hearing loss. Dr. Seaman found that the hearing loss was due to noise exposure from a combination of his federal employment, his work in the military and presbycusis. On January 22, 2013, in response to OWCP's request for a comprehensive otological evaluation, he noted that appellant had sustained hearing loss before starting work at the employing establishment based on his review of audiograms. Dr. Seaman found that an October 26, 1998 audiogram obtained at the time of appellant's retirement revealed increased hearing loss at frequencies over 4,000 cycles. He determined that the hearing loss on the October 26, 1998 audiogram was not within the ratable range. He attributed the hearing loss after appellant's 1998 retirement to presbycusis. Dr. Seaman found that an audiogram performed on July 30, 2012 revealed hearing loss due in part to federal employment but further determined that "it was minimal and only in higher frequencies 4,000 cycles and above."

An OWCP medical adviser reviewed Dr. Seaman's report and the October 26, 1998 audiogram and concurred with his opinion that appellant's ratable hearing loss had occurred since his retirement. As discussed, OWCP's procedures provide that noise-induced hearing loss does not typically progress after exposure to noise ceases; a claimant with an audiogram showing less than a 25-decibel loss soon after exposure ceases and a second audiogram showing a ratable loss may be denied if OWCP's medical adviser provides a well-reasoned opinion.<sup>13</sup>

The October 26, 1998 audiogram, obtained just prior to appellant's retirement, showed hearing levels of 5, 5, 25 and 55 decibels on the right at 500, 1,000, 2,000 and 3,000 Hz, for an average of 22.5. The average of 22.5 decibels, reduced by 25 decibels (the first 25 decibels are discounted as discussed above), to total 0 decibels. With regard to the left ear, the audiogram showed hearing levels of 10, 10, 10 and 55 decibels on the left at 500, 1,000, 2,000 and 3,000 Hz, for an average of 21.5. The average of 21.5, reduced by 25 decibels, equals 0 decibels. Based on this test, OWCP's medical adviser determined that appellant did not sustain a ratable

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<sup>10</sup> *Id.*

<sup>11</sup> *See D.P.*, Docket No. 13-843 (issued August 6, 2013); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(3) (January 2010).

<sup>13</sup> *Id.*

hearing loss due to his federal employment for schedule award purposes. He agreed with Dr. Seaman's finding that the ratable hearing loss began only after appellant's federal employment ended and thus did not result from noise exposure. The Board notes that Dr. Seaman explained that the progression of appellant's hearing loss was not employment related but instead due to presbycusis. While the subsequent audiogram dated July 30, 2012 revealed ratable hearing loss, the deterioration in hearing postretirement is not typical of hearing loss due to noise exposure.<sup>14</sup>

On appeal appellant contends that he had a ratable hearing loss when he retired in 1998. As discussed, however, the October 26, 1998 audiogram did not reveal a ratable impairment under the A.M.A., *Guides*. 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 sustained a ratable hearing loss entitling him to a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> See *Kenneth W. Morgan*, 28 ECAB 569 (1977).