

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

W.W., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Washington, DC, Employer)

**Docket No. 14-643
Issued: July 11, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2014 appellant filed a timely appeal from a January 6, 2014 merit 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 met his burden of proof to establish that he sustained a ratable hearing loss in the performance of duty warranting a schedule award.

FACTUAL HISTORY

OWCP accepted that appellant, then a 61-year-old aviation safety inspector, sustained bilateral sensorineural hearing loss and tinnitus causally related to factors of his federal

¹ 20 C.F.R. § 8101 *et seq.*

employment. He attributed his condition to exposure to hangar maintenance noise. Appellant did not stop work.

OWCP referred appellant to Dr. Richard Seaman, a Board-certified otolaryngologist, for a second opinion examination. In a report dated October 22, 2013, Dr. Seaman reviewed a statement of accepted facts and the medical evidence of record, conducted a thorough physical evaluation and diagnosed bilateral high frequency sensorineural hearing loss and tinnitus. He reviewed the results of an audiogram obtained on October 22, 2013. Audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed decibel losses in the right ear of 0, 5, 10 and 10 decibels, respectively; and decibel losses in the left ear of 5, 10, 10 and 15 decibels, respectively.² Dr. Seaman advised that the audiogram revealed no ratable hearing loss. He found that appellant was a marginal candidate for hearing aids and did not recommend them at that time. Dr. Seaman noted that appellant's bilateral tinnitus was high-pitched and steady, but did not interfere with his activities of daily living.

On December 17, 2013 an OWCP medical adviser, Dr. Duane J. Taylor, a Board-certified otolaryngologist, reviewed the medical evidence and audiometric testing to determine if appellant's binaural sensorineural hearing loss was ratable for schedule award purposes. Using Dr. Seaman's findings, Dr. Taylor calculated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in the left ear, zero percent monaural hearing loss in the right ear and zero percent binaural hearing loss.⁴ Dr. Taylor identified the date of maximum medical improvement as October 22, 2013. Appellant had no ratable hearing loss or additional rating for tinnitus. Dr. Taylor noted that appellant did not need amplification to treat his condition.

By decision dated January 6, 2014, OWCP found that appellant's hearing loss was not severe enough to be ratable. It informed him that he was not entitled to a schedule award or additional medical benefits, such as hearing aids.

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

² The audiological equipment was last calibrated on April 2, 2013.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.* at 252, Table 11-2.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.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* point 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁰

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.¹¹ The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living, 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.¹² A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹³

ANALYSIS

The Board finds that appellant has not established that he has a ratable hearing loss. OWCP accepted that he had bilateral sensorineural hearing loss and tinnitus. After reviewing a statement of accepted facts and the medical evidence of record, conducting a thorough physical evaluation and obtaining an audiogram on October 22, 2013, Dr. Seaman diagnosed bilateral high frequency sensorineural hearing loss and tinnitus. Dr. Taylor, an OWCP medical adviser, reviewed Dr. Seaman's report and concluded that appellant had no ratable hearing loss to warrant a schedule award. By decision dated January 6, 2014, OWCP denied appellant's schedule award claim.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ A.M.A., *Guides* 250.

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

¹¹ A.M.A., *Guides* 249.

¹² *Id.*; *see also Robert E. Cullison*, 55 ECAB 570 (2004).

¹³ *See Charles H. Potter*, 39 ECAB 645 (1988).

The Board finds that appellant was not entitled to a schedule award as he had no ratable employment-related hearing loss. OWCP's medical adviser properly applied OWCP's protocols to the October 22, 2013 audiogram performed as part of Dr. Seaman's second opinion evaluation to arrive at a binaural impairment rating of zero percent. Test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz on the right revealed decibel losses of 0, 5, 10 and 10 decibels respectively, for a total of 25 decibels. This figure, when divided by 4, results in an average hearing loss of 6.25 decibels. The average of 6.25 decibels, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 5, 10, 10 and 15 decibels respectively, for a total loss of 40 decibels; 40 decibels divided by 4 results in an average of 10 decibels, which, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss of the left ear. As the monaural hearing loss rating was zero percent for both the left and right ears, the binaural hearing loss was also zero percent. This does not mean that appellant has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*.¹⁴ The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Dr. Taylor applied the proper standards to the October 22, 2013 audiogram. Appellant's hearing loss was not ratable. For this reason, the Board finds that appellant is not entitled to a schedule award for his nonratable hearing loss.

The Board further finds that OWCP properly denied appellant a schedule award for tinnitus.¹⁵ FECA does not list tinnitus in the schedule of eligible members, organs or functions of the body. A claimant may not directly receive a schedule award for tinnitus. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with activities of daily living, up to five percent may be added to a measurable binaural hearing impairment.¹⁶ The Board has held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.¹⁷ Although OWCP accepted appellant's condition for tinnitus, as his hearing loss is not ratable, the Board will affirm OWCP's January 6, 2014 decision finding that he was not entitled to a schedule award.

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.

¹⁴ See *P.V.*, Docket No. 13-1870 (issued January 7, 2014).

¹⁵ *Id.*

¹⁶ See *supra* note 11.

¹⁷ See *Juan A. Trevino*, 54 ECAB 358 (2003); *Richard Larry Enders*, 48 ECAB 184 (1996); *T.W.*, Docket No. 13-1967 (issued February 10, 2014).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a ratable hearing loss in the performance of duty warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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