

FACTUAL HISTORY

On December 12, 2012 appellant, then a 58-year-old transportation operations officer, filed an occupational disease claim alleging hearing loss as a result of exposure to hazardous sounds from jet engines and industrial noise since 1977. He first became aware of his hearing loss on August 25, 2003 and realized it resulted from his employment on May 16, 2012. Appellant did not stop working.

By letter dated January 3, 2013, OWCP advised appellant that it had not received any evidence to support his occupational disease claim. It requested additional factual and medical evidence to establish his claim. OWCP sent a similar letter to the employing establishment requesting information regarding appellant's employment and noise exposure.

Appellant submitted a description of his job duties and a statement describing his work-related noise exposure to jet engines, air freight terminal and cargo handling machinery. He submitted employee hearing evaluation reports and audiograms dated October 29, 1999 to May 18, 2012. An October 29, 1999 audiogram revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000, hertz (Hz): 10, 5, 5 and 10 for the left ear and 10, 5, 5 and 15 for the right ear.

On January 24, 2013 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. David Kiener, a Board-certified otolaryngologist, for a second-opinion examination to determine whether he sustained employment-related hearing loss. In a February 19, 2013 report, Dr. Kiener reviewed appellant's history, including the statement of accepted facts and related appellant's complaints of hearing loss, worse on the right side than on the left with occasional ringing and tinnitus. He noted that appellant had been employed by the U.S. Air Force since 1977 and worked around heavy cargo loaders and other loud equipment. Appellant used earplugs. Dr. Kiener reported that appellant's last significant noise exposure was in November 2012. Upon physical examination, he observed normal and mobile tympanic membranes and no evidence of abnormalities of the external auditory canals. Dr. Kiener reported that audiograms before 1989 were all normal and that audiograms after October 29, 1999 demonstrated hearing loss developing in the high frequencies, primarily in the 3,000, 4,000 and 6,000 hertz range. An audiogram performed by him that day revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 0, 5, 10 and 15 dBA for the right ear and 0, 5, 5 and 25 dBA for the left ear. Dr. Kiener diagnosed noise-induced sensory hearing loss in the high frequencies. He explained that appellant's progression of hearing loss was consistent with the history of noise exposure he encountered over time during his federal civilian employment. Dr. Kiener advised that appellant was not in need of hearing aids.

On March 6, 2013 OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to employment-related noise exposure. It noted that hearing aids were not authorized.

On June 14, 2013 appellant requested a schedule award.

OWCP referred the case record to Dr. Brain N. Schindler, a Board-certified otolaryngologist and medical consultant, to determine the extent of appellant's permanent impairment.

In a July 26, 2013 report, Dr. Schindler accurately described appellant's employment and reviewed the medical records, including Dr. Keiner's February 19, 2013 report and audiogram. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had zero percent bilateral sensorineural hearing loss. Dr. Schindler did not authorize hearing aids. He found that the date of maximum medical improvement was February 19, 2013, the date of appellant's audiology testing.

In a decision dated August 14, 2013, OWCP denied appellant's schedule award claim. It found that the medical evidence was insufficient to establish that he sustained permanent impairment due to his accepted bilateral sensorineural hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA³ 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 of 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* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles a 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 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.⁷ The Board has concurred in OWCP's adoption of this

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404; *see also* Jacqueline S. Harris, 54 ECAB 139 (2002).

⁵ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

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

⁷ *Id.*

standard for evaluating hearing loss.⁸ The Board has also noted OWCP's policy to round the calculated percentages of impairment to the nearest whole number.⁹

ANALYSIS

OWCP accepted appellant's claim for bilateral sensorineural hearing loss. On June 14, 2013 appellant requested a schedule award. OWCP referred him to Dr. Kiener, who performed an examination and obtained audiological testing. In a July 26, 2013 report, Dr. Schindler reviewed Dr. Kiener's February 19, 2013 second-opinion report and audiogram. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 0, 5, 10 and 15 dBA on the right for a total of 30 dBA. When divided by 4, the average resulted in 7.5 dBA. Because this average is below the fence of 25dBA, appellant has zero percent monaural hearing loss in the right ear. The frequency levels on the left revealed losses of 0, 5, 5 and 25, for a total of 35 dBA. When divided by 4, the average of this figure resulted in an average of 8.75 dBA. Because this average is also below the fence of 25 dBA appellant has zero percent monaural hearing loss in the left ear. Accordingly, appellant is deemed to have no impairment in his ability to hear every day sounds under everyday listening conditions.¹⁰ This does not mean that he has no hearing loss. Rather, the extent of degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's employment-related hearing loss did not reach that threshold. Accordingly, he was not entitled to a schedule award.

On appeal, appellant described the noise to which he was exposed in the performance of his duties. He alleged that the medical reports from the audiology department demonstrate that he has permanent hearing loss. The Board notes that OWCP has accepted that appellant sustained bilateral hearing loss as a result of his employment; however, his hearing loss is not severe enough to be considered a ratable hearing loss.

The Board finds that OWCP properly determined that appellant's hearing loss was not severe enough to be considered ratable for schedule award purposes. Therefore, appellant is not entitled to a schedule award for his employment-related hearing loss.

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 did not establish that he is entitled to a schedule award for his employment-related hearing loss.

⁸ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ *Robert E. Cullison*, 55 ECAB 570 (2004); *J.H.*, Docket No. 08-2432 (issued June 15, 2009). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

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

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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