

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

C.N., Appellant)

and)

TENNESSEE VALLEY AUTHORITY,)
COLBERT FOSSIL PLANT, Tuscumbia, AL,)
Employer)

**Docket No. 14-691
Issued: July 16, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2014 appellant filed a timely appeal from a January 23, 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a ratable permanent impairment caused by the accepted noise-induced hearing loss.

FACTUAL HISTORY

On September 9, 2013 appellant, then a 55-year-old assistant unit operator, filed an occupational disease claim alleging that noise exposure at work caused hearing loss. In letters dated September 12, 2013, OWCP informed appellant of the evidence needed to support his

¹ 5 U.S.C. § 8101 *et seq.*

claim. It also asked the employing establishment to provide information regarding his noise exposure and hearing conservation measures.

Appellant noted that hearing protection was required and worn at all times. He claimed exposure to high noise levels every day, which exceeded 85 decibels. The employing establishment advised that the locations where appellant worked had comprehensive hearing conservation programs in place. Appellant spent the majority of his career as an assistant unit operator (AUO) and, since approximately 1996 (17 years), worked at the Reverse Osmosis plant, which had a time weighted average noise exposure of 82.7 decibels for a 12-hour day.

Appellant submitted audiograms dated June 1, 1978 and September 30, 2013 obtained at the employing establishment. The September 30, 2013 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear, 15, 15, 15 and 15 decibels; left ear 15, 10, 10 and 20 decibels, respectively. The report which contained the September 30, 2013 audiogram listed the results of audiogram each year from 1999 to 2013. Copies of appellant's medical examination records were also included.

In a November 25, 2013 report, Dr. Whitney R. Mauldin, a Board-certified otolaryngologist, noted appellant's history of noise exposure and opined that he had not substantiated his claim for a work-related hearing loss. He stated that the September 30, 2013 hearing examination showed normal hearing in the left ear and normal hearing at all frequencies in the right ear except at 6,000 Hertz.

OWCP prepared a statement of accepted facts and referred appellant, together with the medical record, to Dr. Jack W. Aland, a Board-certified otolaryngologist. In a December 16, 2013 report, Dr. Aland reviewed the history of noise exposure at work, the statement of accepted facts and the medical record. On examination he opined that appellant had mild right neurosensory hearing loss which was found to be work related because of the length and severity of workplace noise exposure. Dr. Aland recommended that appellant avoid further noise exposure. He submitted calibration certification and results of audiometric testing performed by a certified audiologist. The audiogram performed on December 16, 2013, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 15, 15, 15 and 15 decibels; left ear 10, 10, 10 and 20 decibels, respectively.

On January 16, 2014 Dr. Eric Puestow, an OWCP medical adviser, reviewed Dr. Aland's report and the December 16, 2013 audiogram. He advised that the date of maximum medical improvement was December 16, 2013 based on Dr. Aland's examination. Dr. Puestow determined that appellant's bilateral hearing loss was not severe enough to be ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).²

In a January 23, 2014 decision, OWCP accepted that appellant sustained bilateral hearing loss due to employment-related noise exposure. It found that the loss was not sufficient to warrant a schedule award because the extent of hearing loss was not severe enough to be ratable.

² A.M.A., *Guides* (6th ed. 2008).

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition is to be used.⁷

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.⁸ 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.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

ANALYSIS

The Board finds that the evidence of record does not establish that appellant has a ratable hearing loss based on his accepted bilateral hearing loss. The December 16, 2013 audiogram results did not demonstrate ratable values.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *Supra* note 2 at 250.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 251.

¹² *Horace L. Fuller*, 53 ECAB 775 (2002).

The December 16, 2013 audiogram is the only study that complies with OWCP certification procedures.¹³ It demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second of 15, 15, 15 and 15 decibels on the right for a total of 60 decibels. This figure, when divided by four, results in an average hearing loss of 15 decibels. The average of 15 decibels, when reduced by the 25-decibel fence, results in zero percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 10, 10, 10 and 20, for a total of 50 decibels. This figure, when divided by four, results in an average hearing loss of 12.5 decibels, which when reduced by 25 decibels, also results in zero percent monaural hearing loss of the left ear. The Board finds that the December 16, 2013 audiogram did not demonstrate that appellant's hearing loss was ratable. Therefore, appellant is not entitled to a schedule award for his accepted hearing loss condition.

The other audiograms of record are of no probative value because there was no identification or certification of the examiner. Audiologists are not included among the healthcare professionals recognized as a physician under FECA.¹⁴

On appeal appellant asserts that as he has trouble understanding conversations with any background noise, he has an established hearing loss with tinnitus and therefore, he is entitled to compensation. An award up to five percent for tinnitus may be granted in the presence of measurable hearing loss if the tinnitus impacts the ability to perform the activities of living. The medical evidence of record does not establish that appellant has measurable hearing loss which impacts the ability to perform daily living activities.¹⁵ Since the December 16, 2013 audiogram did not demonstrate that appellant's hearing loss is ratable, he is not entitled to a schedule award for his accepted hearing loss condition.

CONCLUSION

The Board finds that appellant did not establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

¹³ OWCP procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; 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: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure; and a statement of the reliability of the tests. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8(a) (September 1995); see *Vernon Brown*, 54 ECAB 376 (2003).

¹⁴ *Thomas O. Bouis*, 57 ECAB 602 (2006). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See *Joshua A. Holmes*, 42 ECAB 231 (1990) (an audiogram prepared by an audiologist must be certified by a physician before it can be used to determine hearing loss).

¹⁵ See *R.D.*, 59 ECAB 127 (2007).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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