

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

C.L., Appellant	)	
	)	
and	)	<b>Docket No. 13-1724</b>
	)	<b>Issued: March 11, 2014</b>
TENNESSEE VALLEY AUTHORITY,	)	
SEQUOYAH, NUCLEAR PLANT,	)	
Soddy Daisy, TN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 15, 2013 appellant filed a timely appeal from the April 30 and May 23, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish more than a two percent hearing loss of the left ear; and (2) whether appellant is entitled to hearing aids.

**FACTUAL HISTORY**

On January 3, 2013 appellant, then a 65-year-old nuclear mechanical technician, filed an occupational disease claim alleging hearing loss due to factors of his federal employment. He

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

first became aware of his condition on January 1, 1997 and realized that it was caused or aggravated by his employment on that date. Appellant was last exposed to the conditions alleged to have caused his hearing loss on December 2, 2005. He reported his exposure to his supervisor on January 17, 2013.<sup>2</sup>

In a January 3, 2013 statement, appellant noted that he first became aware of his hearing loss in 1997. He indicated that he was exposed to long-term loud noise in 1973, when he started work as a steam fitter. Appellant also worked as journeyman steam fitter, a foreman, general foreman, maintenance mechanic and maintenance mechanic foreman. He retired and was last exposed to loud noise in his employment on December 8, 2005. The employing establishment provided health and audiological records, noting appellant's hearing levels at various times between November 26, 1973 and December 5, 2005.

By letter dated April 2, 2013, OWCP referred appellant to Dr. Joseph A. Motto, a Board-certified otolaryngologist. It submitted a statement of accepted facts, a set of questions and the medical record. In a report dated April 16, 2013, Dr. Motto examined appellant and provided findings based on audiological testing. He determined that appellant had symmetric moderate sensorineural hearing loss beginning at 1000 hertz (Hz) due to noise exposure in his federal employment. Dr. Motto recommended bilateral hearing aids. He noted that the tympanogram was normal. Audiometric results from April 16, 2013 revealed hearing levels of 10, 20, 25 and 45 decibels in the right ear and 10, 20, 20 and 55 decibels in the left ear at 500, 1,000, 2,000 and 3,000 Hz respectively. Dr. Motto recommended bilateral hearing aids.

On April 23, 2013 OWCP referred the report of Dr. Motto to a medical adviser for review and an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6<sup>th</sup> ed. 2008). In a report dated April 25, 2013, the medical adviser determined that appellant sustained a two percent left monaural hearing loss. The audiometric testing revealed hearing levels of 10, 20, 25 and 45 decibels in the right ear and 10, 20, 20 and 55 decibels in the left ear at the levels of 500, 1,000, 2,000 and 3,000 Hz. The medical adviser explained that appellant sustained zero percent monaural hearing impairment in the right ear and two percent monaural hearing impairment in the left ear. He noted a maximum medical improvement date of April 16, 2013. With regard to authorization for hearing aids, the medical adviser checked the box "no."

In an April 30, 2013 decision, OWCP accepted the claim for bilateral hearing loss. With regard to hearing aids, it noted that the medical evidence did not establish that appellant required hearing aids.

On May 8, 2013 appellant requested a schedule award.

By decision dated May 23, 2013, OWCP granted appellant a schedule award for two percent impairment of the left ear. The award ran from April 16 to 23, 2013.

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<sup>2</sup> The record reflects that the employer had a hearing conservation program in which appellant participated.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>3</sup> provides compensation to employees sustaining permanent loss or loss of use, of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which results in the sound discretion of OWCP. For consistent results and to insure 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 for evaluating schedule losses and the Board has concurred in such adoption.<sup>4</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>5</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>6</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</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 amount of the binaural hearing loss.<sup>8</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>10</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>5</sup> A.M.A., *Guides* 250.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

<sup>9</sup> *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>10</sup> 5 U.S.C. § 8103(a).

<sup>11</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

## ANALYSIS

The Board finds that appellant has no more than a two percent monaural hearing loss in his left ear.

OWCP referred appellant to Dr. Motto, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Motto examined appellant and an audiogram was obtained from which he reported audiological findings. He found that appellant had sensorineural hearing loss due to noise exposure in his federal employment. Dr. Motto recommended bilateral hearing aids. OWCP referred the medical evidence to, an OWCP medical adviser, for review and a rating of permanent impairment in accordance with the A.M.A., *Guides*.<sup>12</sup>

On April 25, 2013 the medical adviser utilized the examination findings provided by Dr. Motto. The Board notes that the medical adviser applied the findings of the April 16, 2013 audiogram to calculate two percent left sensorineural hearing loss. In accordance with the formula for rating hearing loss, the medical adviser averaged appellant's hearing levels of 10, 20, 25 and 45 decibels in the right ear and 10, 20, 20 and 55 decibels in the left ear at the levels of 500, 1,000, 2,000 and 3,000 Hz. He found average hearing levels of 25 on the right and 26.25 on the left.<sup>13</sup> The medical adviser subtracted the 25-decibel fence<sup>14</sup> and multiplied the remaining balance, of 0 on the right and 1.25 on the left, by 1.5. This resulted in no monaural loss of the right ear and a two percent left ear monaural loss.<sup>15</sup> The Board finds that the medical adviser properly applied the A.M.A., *Guides* to rate two percent left ear hearing loss. The medical adviser determined that the date of maximum medical improvement was April 16, 2013, the date of Dr. Motto's report. As he properly applied the A.M.A., *Guides* in rating impairment, OWCP properly found two percent left ear sensorineural hearing loss.<sup>16</sup> The Board finds that there is no evidence of greater impairment.

With regard to hearing aids, the Board finds that this case is not in posture for decision. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>17</sup> OWCP's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends.<sup>18</sup> In this case,

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<sup>12</sup> See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

<sup>13</sup> See *supra* notes 4 to 6.

<sup>14</sup> The A.M.A., *Guides* provides that when the average of the hearing levels at 500, 1,000, 2,000 and 3,000 Hz is 25 decibels or less, the ability to hear everyday sounds under everyday listening conditions is not impaired. The subtraction of the 25 decibel fence represents this finding. *Id.* at 250.

<sup>15</sup> *Id.*

<sup>16</sup> See *Linda Beale*, 57 ECAB 429 (2006).

<sup>17</sup> *Horace L. Fuller*, 53 ECAB 775, 777 (2002).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1995); see *D.C.*, Docket No. 06-883 (issued August 1, 2006).

Dr. Motto recommended bilateral hearing aids. The Board notes that OWCP's medical adviser checked the box "no" with regard to whether hearing aids were authorized; but he did not explain why he disagreed with the second opinion physician. Once OWCP starts to procure medical opinion, it must do a complete job.<sup>19</sup> It has the responsibility to obtain an evaluation that will resolve the issue involved in the case.<sup>20</sup> The Board will remand the case to OWCP for a supplemental opinion from Dr. Motto addressing the need for hearing aids. Following this and any further development of the evidence, OWCP shall then issue a *de novo* decision on the issue of whether hearing aids should be authorized.<sup>21</sup>

On appeal, appellant's wife argues that appellant cannot hear and contends that the schedule award he received is not adequate compensation. The schedule award provision of FECA provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>22</sup> FECA establishes a maximum of 52 weeks of compensation as the award for total (100 percent) monaural hearing loss.<sup>23</sup> A partial loss of hearing is compensated at a proportionate rate.<sup>24</sup> Appellant's award of compensation for two percent sensorineural loss of the left ear entitled him to two percent of 52 weeks of compensation or 1.04 weeks of compensation as awarded. The terms of FECA are specific as to the method and amount of payment of compensation. Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under any terms other than those specified in the statute.<sup>25</sup> As noted, the case is not in posture for decision with regard to whether hearing aids should be authorized.

The Board notes that 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 sustained two percent monaural hearing loss of the left ear, for which he received a schedule award. The Board further finds that the case is not in posture for decision as to whether hearing aids should be authorized for his employment-related hearing loss.

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<sup>19</sup> *K.P.*, Docket No. 13-676 (issued June 11, 2013); *see also William N. Saathoff*, 8 ECAB 769 (1956).

<sup>20</sup> *K.P., id., Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

<sup>21</sup> *See J.D.*, Docket No. 07-720 (issued June 19, 2007).

<sup>22</sup> 5 U.S.C. § 8107(c).

<sup>23</sup> Total monaural hearing loss only entitles a claimant to 52 weeks of compensation for each ear. *See* 5 U.S.C. § 8107(c)(13)(A).

<sup>24</sup> *Id.* at § 8107(c)(19).

<sup>25</sup> *Wayne B. Kovacs (Cynthia A. Kovacs)*, 55 ECAB 133 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed. The April 30, 2013 decision is set aside with regard to the denial of hearing aids and the matter is remanded to OWCP for further development consistent with this decision.

Issued: March 11, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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