

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

P.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 14-563
Issued: May 22, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 6, 2014 appellant filed a timely appeal from a July 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 established that he has more than 15 percent hearing loss of the right ear; and (2) whether he has sustained a hearing loss in his left ear causally related to his federal employment.

¹ This appeal was received by the Board on January 14, 2014. As the 180th day following July 15, 2013 was Saturday, January 11, 2014, this appeal would have been timely filed if received on Monday, January 13, 2014. *See* 20 C.F.R. § 501.3(f)(2). Since the appeal was received on January 14, 2014, the Board accepts the date of postmark, January 6, 2014 as the date of filing. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 8, 2008 appellant, a 73-year-old mail processing mechanic, filed an occupational disease claim (Form CA-2), alleging bilateral hearing loss caused by factors of his federal employment. He worked as a mechanic at the employing establishment since 1982 and was exposed to loud noise. Appellant repaired various machines. Hearing protection was provided but not always used. From 1961 to 1981 appellant was on active duty in the U.S. Navy; he served on board a surface ship and a submarine.

In a July 11, 2008 report, Dr. Richard W. Seaman, a Board-certified otolaryngologist, evaluated appellant for bilateral sensorineural hearing loss. An audiogram dated July 8, 2012, with an attached calibration certificate, showed hearing levels of 80, 85, 75, 75 decibels on the left and 30, 35, 30 and 45 decibels on the right, at 500, 1,000, 2,000 and 3,000 Hertz, respectively. Based on the audiogram, appellant had a ratable hearing loss of 15 percent in the right ear due to noise exposure and presbycusis. While Dr. Seaman noted that appellant had complaints of tinnitus, he found no impairment due to that condition. He recommended hearing aids for the right ear. Regarding the left ear, Dr. Seaman stated that appellant's left ear was a "dead" ear and found that the left-sided hearing loss was not causally related to the noise exposure.

On September 15, 2009 OWCP accepted the claim for right hearing loss with tinnitus.

On October 11, 2012 Dr. L.I. Weaver, an OWCP medical adviser, reviewed the record. He related that appellant had noticed a gradual loss of hearing since 1996. Dr. Weaver worked as a mechanic on all machines. Hearing protection was provided but may not have been used due to urgent repair needs. The July 8, 2008 audiometry report for Dr. Seaman revealed that the left ear was a "dead ear," with a profound hearing loss; no useful speech or word discrimination and deafness that was not characteristic of a hearing loss due to work-related noise exposure. A workup for acoustic neuroma was negative and the etiology of the left ear hearing loss was not identified.

As to the right ear, Dr. Weaver noted that the loss was a combination in excess of that which would be normally predicted on the basis of presbycusis alone and was likely due to noise exposure. The extent of loss measured 15 percent as found by Dr. Seaman. Dr. Weaver also noted appellant's history of a high-pitched tinnitus that was annoying but did not interfere with activities of daily living. There was a zero percent (no) impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* for tinnitus.

By decision dated July 15, 2013, OWCP granted a schedule award for 15 percent hearing loss in his right ear and found that he required a hearing aid for the right ear. Appellant did not establish that his left ear hearing loss was causally related to his federal employment.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing regulations⁴ 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 to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hertz, the losses at each frequency are added up and averaged.⁷ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS -- ISSUE 1

OWCP found that appellant had sustained an employment-related right-sided hearing loss in accordance with the A.M.A., *Guides*.¹⁰ Dr. Seaman obtained a July 8, 2012 audiogram showing hearing loss levels of 30, 35, 30 and 45 decibels on the right. The losses were added to total 140 decibels and then averaged to 35 decibels. The average of 35 decibels was reduced by the fence of 25 decibels to 10 decibels, which was then multiplied by the factor of 1.5 to equal 15 decibels. Dr. Seaman noted that appellant had tinnitus, but that it did not interfere with his activities of daily living. 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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.700.4.b (January 2010).

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹¹ See A.M.A., *Guides* 249.

concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable hearing impairment.¹² Dr. Seaman concluded that appellant was not entitled to an additional award for tinnitus, as it did not interfere with his activities of daily living. The weight of medical opinion establishes that appellant had 15 percent right-sided hearing loss. The district medical adviser reviewed Dr. Seaman's reports on October 11, 2012. Dr. Weaver agreed that appellant had 15 percent right-sided hearing loss, which was employment related. There is no medical evidence of record to establish more than 15 percent right-sided hearing loss. OWCP properly granted appellant a schedule award for this amount.

LEGAL PRECEDENT -- ISSUE 2

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹³

ANALYSIS -- ISSUE 2

It is not disputed that appellant sustained a hearing loss in his left ear. The issue is whether his hearing loss was caused or aggravated by exposure to noise in his employing establishment.

Dr. Seaman provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. He explained that appellant's left ear was a "dead" ear and was not causally related to the history of occupational noise exposure. Dr. Weaver concurred with this opinion. The Board finds that Dr. Seaman's report represents the weight of the evidence. The Board also notes that appellant has not submitted any medical evidence that relates his left-sided hearing loss to noise exposure in his federal employment. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for a hearing aid for the left ear.

On appeal, appellant contends that he sustained a hearing loss causally related to noise exposure at his federal employment and that therefore he is entitled to a schedule award for the left ear. As noted, the medical evidence of record does not substantiate that his left-sided hearing loss was employment related.

¹² See *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

¹³ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

CONCLUSION

The Board finds that OWCP properly granted appellant a schedule award for 15 percent permanent impairment of the right ear and that appellant did not meet his burden of proof to establish that his left-sided sensorineural hearing loss was causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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