United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 14-1954**
	)	**Issued: January 5, 2015**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Norton, VA, Employer	)	

Appearances:
Gregory M. Stewart, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 9, 2014 appellant, through counsel, timely appealed the May 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant is entitled to an increased schedule award for binaural hearing loss.

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] Appellant's counsel submitted a recent medical report obtained subsequent to OWCP's May 19, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

FACTUAL HISTORY

Appellant, a 65-year-old retired supervisory mine safety and health specialist, has an accepted claim for binaural hearing loss. He worked for the employing establishment from August 1978 until his retirement in October 2007.[3] Appellant indicated that he first learned of his employment-related hearing loss on March 15, 2012, which OWCP accepted as the date of injury.

On September 25, 2012 OWCP granted a schedule award for 14 percent binaural hearing loss. It based the award on the July 30, 2012 findings of Dr. Frank B. Little, Jr., a Board-certified otolaryngologist and OWCP referral physician. The district medical adviser, Dr. David D. Zimmerman, reviewed Dr. Little's findings and calculated 14 percent binaural hearing loss. The September 25, 2012 schedule award covered a 28-week period from July 30, 2012 through February 10, 2013.

On January 2, 2014 appellant filed a claim (Form CA-7) for an increased schedule award.

By letter dated January 8, 2014, OWCP advised appellant to submit a new narrative medical report that included an impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008). Appellant was afforded at least 30 days to submit the requested medical evidence; however, OWCP did not receive any evidence in response to its January 8, 2014 development letter.

By decision dated February 20, 2014, OWCP denied appellant's claim for an increased schedule award. It noted the record did not include any recent examination findings establishing additional hearing loss.

On February 28, 2014 OWCP received a request for reconsideration from appellant. It also received a January 22, 2014 audiogram administered by Fredia J. Helbert, a doctor of audiology (Au.D.), who diagnosed moderate to severe bilateral sensorineural hearing loss. Ms. Helbert noted that appellant's hearing had decreased since his April 2012 audiogram.[4] She noted that the configuration of this hearing loss was similar to noise-induced hearing loss. Ms. Helbert further noted that, according to the A.M.A., *Guides*, appellant had 20.6 percent impairment on the right side and 28.1 percent on the left.[5]

OWCP referred the record to Dr. Zimmerman, who noted that input solely from an audiologist could never be used to consider a hearing loss schedule award. In his April 29, 2014 report, Dr. Zimmerman also questioned whether the reported increase was employment-related given that appellant's occupational noise exposure ended in October 2007. He explained that

[3] Appellant retired effective October 3, 2007.

[4] Appellant also submitted an April 4, 2012 audiogram and report from Ms. Helbert, which was already part of the record.

[5] The January 22, 2014 audiogram noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. The right ear losses were recorded as 15, 25, 40, and 75 decibels. The left ear losses were recorded as 20, 25, 60, and 70 decibels. Based on the recorded measurements, appellant had 22 percent binaural hearing loss.

occupational hearing loss does not seem to progress when noise exposure stops, whereas age-related hearing loss (presbycusis) generally progresses, albeit very slowly. Therefore, even if the January 22, 2014 audiogram demonstrated a more severe hearing loss, the increase was not shown to be employment related.

In a May 19, 2014 decision, OWCP reviewed the merits of the claim, but denied modification of the February 20, 2014 decision. It noted that appellant had not been exposed to hazardous noise levels since October 3, 2007. Additionally, OWCP found that the audiologist's January 22, 2014 report by itself was insufficient to establish entitlement to a new and increased schedule award for binaural hearing loss.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[6] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[8]

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.[9] Then, the "fence" of 25 decibels is 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.[10] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[11] 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, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[12]

[6] For complete loss of hearing of one ear, an employee shall receive 52 weeks' compensation. 5 U.S.C. § 8107(c)(13). For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. *Id.*

[7] 20 C.F.R. § 10.404.

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

[9] *See* Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6th ed. 2008).

[10] *Id.* at 250.

[11] *Id.* at 250-51.

[12] *Id.* at 251.

ANALYSIS

The Board finds that the recent medical evidence does not establish entitlement to an increased schedule award for binaural hearing loss. OWCP previously granted an award for 14 percent binaural hearing loss based on the July 30, 2012 findings of Dr. Little, a Board-certified otolaryngologist and OWCP referral physician. On January 2, 2014 appellant filed a claim for an increased schedule award. Appellant, however, failed to submit any new medical evidence in support of his claim. OWCP denied the request for an increased schedule award by decision dated February 20, 2014. Appellant subsequently requested reconsideration and submitted a January 22, 2014 audiogram and report from Ms. Helbert. Based on the latest audiogram, she calculated 20.6 percent impairment on the right side and 28.1 percent on the left, which represented 22 percent binaural hearing loss. Ms. Helbert stated that the configuration of appellant's hearing loss was similar to a noise-induced hearing loss.

The Board finds that OWCP properly denied the request for an additional schedule award as it cannot be based entirely on an audiologist's findings.[13] An audiologist is not a physician under the definition in FECA.[14]

CONCLUSION

Appellant has not established entitlement to an increased schedule award for binaural hearing loss.

[13] *See J.H.*, 59 ECAB 377, 380 (2008); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8a (September 1995). Although Ms. Helbert is a doctor of audiology (Au.D.), she is not a physician. *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[14] *See id.*

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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