United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 15-0529**
	)	**Issued: July 2, 2015**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, Ogden, UT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 8, 2015 appellant filed a timely appeal from a July 23, 2014 merit decision of the Office of Workers' Compensation Programs. 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.

ISSUE

The issue is whether appellant established a ratable binaural hearing loss entitling him to a schedule award.

FACTUAL HISTORY

On October 1, 2012 appellant, then a 53-year-old retired electroplater and shot peen machine operator, filed an occupational disease claim alleging that, on January 11, 2000, he first

[1] 5 U.S.C. § 8101 *et seq.*

became aware of his hearing loss and tinnitus and realized that his conditions were caused by extreme noise at work.

Appellant submitted employment records which included a notification of personnel action (SF 50-B) indicating that he had voluntarily retired from the employing establishment effective April 30, 2012.

By letter dated October 15, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and provide a copy of all medical examinations pertaining to his hearing or ear problems, including any preemployment examinations and audiograms.

In an undated narrative statement, appellant related that his hearing loss began in December 1981 when he started work at the employing establishment. He described his work duties and noise exposure as a shot peen operator from December 1981 to October 2003 and as an electroplater from October 2003 to April 2012. Appellant was exposed to noise eight to nine hours a day, four to seven days a week and during over-time work. He wore hearing protection at all times. Appellant noticed ringing in his ears within a year of his employment and suspected hearing loss was inevitable due to his exposures. His last day of noise exposure was April 30, 2012. Appellant had no exposure to hazardous noise prior to his civil service employment.

Appellant submitted audiograms performed by the employing establishment as part of a hearing conservation program dated August 8, 2006 through April 23, 2012.

In an October 31, 2012 letter, the employing establishment controverted appellant's claim based on the medical opinion of Dr. Deepa Hariprasad, an employing establishment audiologist. Dr. Hariprasad advised that any hearing loss sustained by appellant was not work related based on appellant's statement that he wore hearing protection at all times at work.

By letter dated February 19, 2013, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Robert L. Moesinger, a Board-certified otolaryngologist, and Dr. Kerry Braunberger, an audiologist, to determine whether he had any permanent impairment due to his federal employment, entitling him to a schedule award.

In a March 5, 2013 medical report, Dr. Moesinger set forth normal findings on examination and diagnosed bilateral essentially symmetrical high tone neurosensory hearing loss due to noise exposure in appellant's federal employment. He recommended a hearing aid evaluation with aids for high frequency loss.

Also, on March 5, 2013 Dr. Braunberger performed an audiometric test. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of the right ear as 15, 15, 10, and 20, respectively. Testing at the same frequency levels noted above revealed decibel losses of 10, 10, 10, and 30, respectively, regarding the left ear.

On March 22, 2013 an OWCP medical adviser reviewed Dr. Moesinger's report and Dr. Braunberger's audiometric test results. He agreed that appellant's binaural sensorineural

hearing loss was due to occupational noise exposure. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and following the same analysis determined that appellant had no ratable impairment.[2] He advised that the date of maximum medical improvement was March 5, 2013, the date of Dr. Moesinger's examination. The medical adviser recommended authorization for hearing aids for both ears. An examination by a specialist was not recommended.

In a March 26, 2013 decision, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. In an April 8, 2013 decision, it, however, determined that his hearing loss was not severe enough to be considered ratable under the sixth edition of the A.M.A., *Guides*. OWCP did authorize additional medical benefits.

By letter dated October 3, 2013, appellant, through counsel, requested reconsideration of the April 8, 2013 decision. Counsel contended that the list of accepted conditions did not include tinnitus. He further contended that accompanying employing establishment audiograms revealed that appellant's hearing ability declined gradually, but steadily. Counsel was concerned that the March 5, 2013 evaluation did not focus on assessing ratability and was not correct as the skew lines drawn on the hearing test to determine the amount of hearing loss were crooked and resulted in an inaccurate rating. The results clearly indicated loud noise exposure hearing loss and that, high tone receptors were clearly damaged, resulting in a lack of discrimination of speech. Counsel contended that others who worked in the same environment as appellant for many years had similar hearing loss and were deemed eligible for a schedule award and received compensation.

Appellant resubmitted the employing establishment audiograms dated August 8, 2006 to April 23, 2012. He submitted employing establishment audiograms performed on December 11, 1989 and January 11, 2000 and treatment notes prepared on August 8 and 15, 2006 by the employing establishment which addressed test results and his hearing loss.

In a December 4, 2013 decision, OWCP denied appellant's request for reconsideration without a merit review of the claim. It found that he did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

By letter dated February 20, 2014, counsel, on behalf of appellant, requested reconsideration. He contended that accompanying medical evidence established that acceptance of appellant's claim should be expanded to include tinnitus and that he was entitled to a schedule award for this condition.

An audiogram performed by Dr. Suzanne C. Short, an audiologist, on February 4, 2014 provided that testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of the right ear as 10, 10, 25, and 25, respectively. Testing at the same frequency levels noted above revealed decibel losses as 15, 15, 20, and 40, respectively, regarding the left ear. Dr. Short noted that appellant had a history of noise exposure and wore hearing protection at

[2] A.M.A., *Guides* 250, Table 11-1.

work. She advised that he had hearing loss and tinnitus. Appellant had mild to moderate high frequency sensorineural hearing loss in the right ear and moderate high frequency sensorineural hearing loss in the left ear. Dr. Short determined that he had zero percent hearing loss under the sixth edition of the A.M.A., *Guides*.

In a February 4, 2014 report, Dr. Michael C. Scheuller, a Board-certified otolaryngologist, listed findings on examination and assessed high frequency sensorineural hearing loss with tinnitus. He noted Dr. Short's zero percent impairment rating under the A.M.A., *Guides*. Dr. Scheuller determined that appellant had five percent impairment for tinnitus.

By letter dated May 16, 2014, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Stewart E. Barlow, a Board-certified otolaryngologist, and Dr. Robert L. Eppens, an audiologist, to determine whether appellant had any permanent impairment due to his federal employment, entitling him to a schedule award.

In a June 6, 2014 report, Dr. Barlow listed examination findings and diagnosed bilateral sensorineural hearing loss and bilateral tinnitus due to noise exposure in appellant's federal employment. He described how tinnitus affected appellant's quality of life. Dr. Barlow recommended hearing aids and protection.

Dr. Eppens performed an audiometric test on the same day as Dr. Barlow's examination. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of the right ear as 15, 15, 20, and 30, respectively. Testing at the same frequency levels noted above revealed decibel losses of 15, 15, 20, and 45, respectively, regarding the left ear.

On July 10, 2014 the prior OWCP medical adviser reviewed Dr. Barlow's report and Dr. Eppens' audiometric test results. He reiterated that appellant had binaural sensorineural hearing loss due to occupational noise exposure. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant had no ratable hearing impairment for either ear. Decibel losses for the right ear were totaled at 100 and divided by 4, to obtain the average hearing loss per cycle of 25 decibels. The average of 25 decibels was then reduced by the 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 decibels, which was multiplied by the established factor of 1.5 to compute a zero percent monaural hearing loss for the right ear. Decibel losses for the left ear were totaled at 80 and divided by 4, to obtain the average hearing loss per cycle of 20 decibels. The average of 20 decibels was then reduced by the 25 decibels (25 decibels being discounted as discussed above), which was multiplied by 1.5 to compute a -7.5 monaural loss for the left ear. No percentage was added for tinnitus. The medical adviser noted that tinnitus was ratable in cases where there was impairment from hearing loss in one or more ears. He concluded that appellant had no ratable hearing loss in either ear and, therefore, a tinnitus rating did not apply. The medical adviser determined that the date of maximum medical improvement was June 6, 2014, the date of Dr. Barlow's examination. He recommended authorization for hearing aids for both ears. An examination by a specialist was not recommended.

In a July 23, 2014 decision, OWCP accepted appellant's claim for tinnitus. In a separate decision dated July 23, 2014, it denied modification of its decision denying his schedule award claim.

LEGAL PRECEDENT

The schedule award provision of FECA[3] 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 under the law, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[4] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.[5]

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 up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs 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. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[7]

Regarding tinnitus, 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.[8] The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living (ADL), including sleep, reading (and other tasks

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.404.

[5] *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 and Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

[6] *See* A.M.A., *Guides* 250.

[7] *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

[8] *See* A.M.A., *Guides* 249.

requiring concentration), enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.[9]

ANALYSIS

The Board finds that the evidence of record does not establish that appellant has a ratable hearing loss arising from his accepted binaural sensorineural hearing loss and tinnitus.

In order to determine the extent of any employment-related hearing impairment, OWCP referred appellant to Dr. Barlow for an otologic evaluation and Dr. Eppens for audiometric testing. Dr. Barlow concluded that appellant had employment-related bilateral sensorineural hearing loss and employment-related tinnitus. An OWCP medical adviser reviewed a June 6, 2014 audiogram performed by Dr. Eppens and reviewed by Dr. Barlow that day. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses of the right ear as 15, 15, 20, and 30, respectively. These decibel losses were totaled 100 and were divided by 4 to obtain an average hearing loss of 25 decibels. This average was then reduced by the 25 decibels (the first 25 decibels were discounted as discussed in Legal Precedent) to equal 0 decibels. The resulting loss of 0 was multiplied by the established factor of 1.5 and yielded a zero percent monaural hearing loss for the right ear.

Testing of the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses of 15, 15, 20, and 45, respectively. These decibel losses were totaled at 80 decibels and divided by 4 to obtain an average hearing loss of 20 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal -5, which was multiplied by the established factor of 1.5 to compute a -7.5 percent hearing loss in the left ear. A negative number equates to zero. The Board finds that an OWCP medical adviser properly calculated appellant's hearing loss to be nonratable for both the right and left ears. Thus, although an employment-related bilateral hearing loss exist, it is not large enough to be ratable.[10]

The Board further finds that an OWCP medical adviser properly determined that appellant was not entitled to a schedule award for tinnitus. FECA does not list tinnitus in the schedule of eligible members, organs, or functions of the body. Therefore, no claimant may receive a schedule award exclusively for tinnitus. Hearing loss is a covered function of the body and if tinnitus contributes to an existing ratable loss of hearing, a claimant's schedule award may reflect that contribution. The A.M.A., *Guides* provide that, if tinnitus interferes with appellant's ADL, up to five percent may be added to a ratable binaural hearing impairment.[11] The Board has held that there is no basis for paying a schedule award for tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.[12] Because there is no ratable hearing loss in this case, there can be no schedule award for tinnitus.

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

[10] *See H.S.*, Docket No. 07-772 (issued July 12, 2007).

[11] *See supra* note 9.

[12] *See Richard Larry Enders*, 48 ECAB 184 (1996).

Dr. Scheuller's February 4, 2014 report noted Dr. Short's audiogram performed on that day which also found that appellant had no ratable binaural hearing loss. Dr. Scheuller, however, awarded appellant five percent impairment for tinnitus. This was incorrect because appellant did not sustain a ratable hearing loss and he cannot receive a schedule award exclusively for tinnitus.

The employing establishment audiograms dated December 11, 1989 to April 23, 2012 have no probative value as they were not reviewed or certified as accurate by a physician.[13]

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 has failed to establish that he has a ratable binaural hearing loss entitling him to a schedule award.

[13] *T.B.*, Docket No. 09-1504 (issued April 12, 2010). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician); 5 U.S.C. § 8101(2). *See also Robert E. Cullison*, *supra* note 9 (does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist). *See also James A. England*, 47 ECAB 115 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; need not review uncertified audiograms). *See also Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss).

ORDER

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

Issued: July 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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