

FACTUAL HISTORY

On May 5, 2014 appellant, then a 55-year-old special agent, filed an occupational disease claim (Form CA-2) alleging hearing loss due to noise exposure in the course of his federal employment. He first related his condition to his work on March 28, 2014.

In an undated statement, appellant reported that he had worked as a special agent or border patrol agent at the employing establishment since February 3, 1985. During that time, he was exposed to noise from vehicle sirens, quarterly firearms trainings, and arriving and departing airplanes from a local airport. Appellant also noted being approximately 50 yards away from the site of an aircraft crash and explosion in 1989. An October 22, 2013 audiogram from an audiologist accompanied his statement.

In an April 29, 2014 report, Dr. John Lasiter, a Board-certified otolaryngologist, diagnosed appellant with bilateral high-frequency mild sensorineural hearing loss. An audiogram, administered on the same date, reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps), and revealed the following hearing loss: right ear 15, 10, 15, and 20 decibels (dB); left ear 15, 10, 20, and 35 dBs. Dr. Lasiter indicated that appellant's hearing loss was most likely due to noise exposure.

On May 13, 2014 appellant filed a claim for compensation (Form CA-7), indicating that he was seeking a schedule award.

On November 17, 2014 OWCP referred appellant, along with a statement of accepted facts, to Dr. Keith Walvoord, a Board-certified otolaryngologist, for a second opinion evaluation. In a December 2, 2014 report, Dr. Walvoord reviewed the statement of accepted facts and medical history. He noted that appellant complained of hearing problems, tinnitus, and dizziness. Appellant's ears appeared normal on examination. Accompanying Dr. Walvoord's report was a December 2, 2014 audiogram, performed on his behalf, reflecting testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cps. The audiogram revealed the following results: right ear 10, 10, 15, and 25 dBs; left ear 15, 10, 15, and 35 dBs. Dr. Walvoord reviewed the audiogram and diagnosed bilateral sensorineural hearing loss. He checked a box indicating that appellant's hearing loss was due to noise exposure encountered in his federal employment. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), Dr. Walvoord opined that appellant had a bilateral impairment rating of zero. He recommended annual audiograms.

On February 2, 2015 an OWCP medical adviser reviewed Dr. Walvoord's report and audiometric findings. He determined that appellant had reached maximum medical improvement on December 2, 2014. The medical adviser found that appellant's hearing loss was caused or aggravated by exposure to occupational noise, but based on his calculations using the A.M.A., *Guides*, appellant had no ratable hearing loss. Hearing aids were not authorized.

In a February 4, 2015 decision, OWCP accepted that appellant sustained bilateral hearing loss due to employment-related noise exposure. In a separate decision on the same date, it denied his claim for a schedule award, finding that the extent of hearing loss was not severe enough to be ratable. OWCP further found that appellant would not benefit from hearing aids.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations² 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.³ The A.M.A., *Guides*, (6th ed. 2009) have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000, and 3,000 cps, 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* point out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions. 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁶

ANALYSIS

The Board finds that the evidence of record does not establish that appellant has a ratable impairment based on his accepted bilateral sensorineural hearing loss. In developing the claim, OWCP referred appellant to Dr. Walvoord who examined appellant on December 2, 2014 and reviewed an audiogram of same date. In his report, Dr. Walvoord opined that appellant sustained bilateral sensorineural hearing loss related to occupational noise exposure, but indicated that it was not ratable. An OWCP medical adviser reviewed the audiogram performed by Dr. Walvoord and concurred that appellant did not have a ratable hearing loss for the purpose of a schedule award. Thereafter, OWCP denied a schedule award in a February 4, 2015 decision.

The medical adviser applied OWCP's standard procedures to the December 2, 2014 audiogram obtained by Dr. Walvoord. Under OWCP's standardized procedure, results for the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed hearing loss of 10, 10, 15, and 25 dBs on the right, for a total of 60 dBs. This figure, when divided by four, results in an average hearing loss of 15 dBs. The average of 15 dBs, when reduced by the 25 dB fence, results in

² 20 C.F.R. § 10.404.

³ See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

⁴ *Supra* note 2; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

⁵ See A.M.A., *Guides* 250 (6th ed. 2009).

⁶ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

zero percent monaural hearing loss in the right ear. Using identical frequency levels for the left ear, the audiogram revealed dB losses of 15, 10, 15, and 35, for a total of 75 dBs. This figure, when divided by four, results in an average hearing loss of 18.75 dBs, which, when reduced by the 25 dB fence, results in zero percent monaural hearing loss in the left ear. Because the monaural hearing loss rating was zero percent in both ears, the binaural hearing loss was also zero percent. Based on the foregoing, the Board finds that appellant has failed to demonstrate a ratable hearing loss to warrant a schedule award.

There is no other medical evidence of record containing audiometric testing supporting a ratable hearing loss. The results of the April 29, 2014 audiogram from Dr. Lasiter, at the frequency levels of 500, 1,000, 2,000, and 3,000 cps, revealed hearing loss of 15, 10, 15, and 20 dBs on the right, for a total of 60 dBs. This is the same total as the December 2, 2014 audiogram revealed, which was not ratable. Testing on the left revealed hearing loss of 15, 10, 20, and 35 dBs, for a total of 80 dBs. This figure, when divided by four, results in an average hearing loss of 20 dBs, which, when reduced by the 25 dB fence, still results in zero percent monaural hearing loss of the left ear. Consequently, appellant did not establish that he had a ratable hearing loss for purposes of a schedule award. He also submitted results of an October 22, 2013 audiogram. However, this audiogram is of no probative medical value because it was not certified by a physician as accurate.⁷

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 did not establish a ratable impairment caused by the accepted noise-induced hearing loss.

⁷ See *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); see also *James A. England*, 47 ECAB 115, 118 (1995) (finding that an audiogram not certified by a physician as accurate has no probative value and OWCP need not review uncertified audiograms).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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