

FACTUAL HISTORY

On July 9, 2014 appellant, then a 56-year-old electrician, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of noise exposure from his federal employment. He first became aware of his condition on September 12, 2002 and of its relationship to his employment on November 3, 2003. Appellant continued to be exposed to his employment factors through the date of his claim.

By letter dated July 17, 2014, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment, and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, whether he wore ear protection, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

Hearing conservation data, medical notes, and audiograms were submitted dated September 27, 1983 to June 5, 2014.

In an August 3, 2014 narrative statement, appellant responded to an OWCP questionnaire and stated that he had been an electrician for the U.S. Army from October 13, 1983 to the present. He reported exposure to high intensity noise levels for approximately eight hours per day, five days per week. Appellant's exposure included noise from impact wrenches, hammers, air arcs, grinders, machines, small arms fire, air compressors, chillers, air handlers, dyno test stands, vehicle testing, power tools, core drills, threading machines, band saws, hammers, and warning sirens. He noted no prior ear or hearing problems.

OWCP referred appellant, together with the statement of accepted facts (SOAF), to Dr. Dennis G. Pappas, a Board-certified otolaryngologist, for a second opinion evaluation on January 8, 2015. An audiogram was completed on January 8, 2015 which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 5, 0, 5, and 35 for the right ear and 10, 5, 10, and 60 for the left ear. Speech reception thresholds were 5 dB on the right and 10 dB on the left, while auditory discrimination scores were 84 percent on the right and 72 percent on the left. Dr. Pappas diagnosed bilateral sensorineural hearing loss which he opined was caused by his federal employment-related noise exposure. He stated that the hearing loss was in excess of what would normally be predicated on the basis of presbycusis and that the workplace exposure was sufficient as to intensity and duration to have caused the loss in question. Dr. Pappas recommended hearing aids and the use of ear protection around noise.

On February 2, 2015 OWCP referred the case file along with Dr. Pappas' report to an OWCP district medical adviser (DMA), to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement.

In a February 3, 2015 report, the DMA reviewed Dr. Pappas' report and agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure. He

applied the January 8, 2015 audiometric data to OWCP's standard for evaluating hearing loss and determined that appellant had a zero percent monaural hearing loss in the left ear and a zero percent monaural hearing loss in the right ear. The DMA concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² appellant had no ratable hearing loss. He further opined that hearing aids should not be authorized.

By decision dated February 5, 2015, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and denied his schedule award claim finding that his hearing loss was not severe enough to be considered ratable. It further found that he would not benefit from hearing aids.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ 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 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, 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* (6th ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁴

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.⁵ 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.⁶

² A.M.A., *Guides* (6th ed. 2009).

³ *Supra* note 1.

⁴ *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ *See* A.M.A., *Guides* 250.

⁶ *See E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

ANALYSIS -- ISSUE 1

As appellant was still employed as an electrician at the employing establishment and was exposed to hazardous noise at the time that his claim was filed, OWCP properly determined that the claim was timely filed.⁷ OWCP accepted his claim for bilateral noise-induced hearing loss. The issue is whether appellant sustained a ratable impairment in accordance with the A.M.A., *Guides*. The Board finds that OWCP properly denied his schedule award claim.⁸

Appellant filed a claim for hearing loss and was referred to Dr. Pappas for a second opinion examination. After reviewing the SOAF and medical file, conducting a thorough physical evaluation and obtaining an audiogram on January 8, 2015, Dr. Pappas diagnosed bilateral sensorineural noise-induced hearing loss. OWCP's DMA concurred with this finding, however, concluded that appellant had no ratable hearing loss to warrant a schedule award or hearing aids. By decision dated February 5, 2015, OWCP accepted his claim for left ear hearing loss, but denied a schedule award and authorization for hearing aids.

The Board finds that the DMA properly determined that appellant was not entitled to an impairment rating for his bilateral hearing loss. According to the audiometry obtained on January 8, 2015, appellant's hearing thresholds were 5, 0, 5, and 35 on the right and 10, 5, 10, and 60 on the left. These total 45 and 85 dBs, respectively, for averages of 11.25 and 21.25 db. Because these averages are below the fence of 25 dBs, appellant is deemed to have no impairment in his ability to hear everyday sounds under everyday listening conditions.⁹ This does not mean that he has no hearing loss. However, it means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold.¹⁰ Thus, the DMA applied the proper standards to the January 8, 2014 audiogram to determine that appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's nonratable hearing loss.¹¹

LEGAL PRECEDENT -- ISSUE 2

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

⁷ See *R.G.*, Docket No. 15-0167 (issued February 27, 2015). The Board noted in this hearing loss case that an employee with actual or constructive knowledge of his or her employment-related condition, who continues to be exposed to injurious working conditions, must file a claim within three years of the date of last exposure to the implicated conditions.

⁸ *A.B.*, Docket No. 13-316 (issued June 20, 2013).

⁹ See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

¹⁰ *Supra* note 5.

¹¹ *R.R.*, Docket No. 12-1840 (issued February 14, 2013).

any monthly compensation.¹² OWCP must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.¹³

Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are clearly contrary to both logic and probable deduction from established facts.¹⁴

Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.¹⁵

An OWCP decision must contain findings of fact and statement of reasons.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision on whether appellant is entitled to hearing aids.¹⁷

The Board has held that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be provided if any causally related hearing loss exists.¹⁸ Dr. Pappas' report indicated that the noise at appellant's workplace was sufficient to cause his hearing loss and he recommended hearing amplification. The DMA, however, noted that hearing aids should not be authorized, but did not provide any explanation for this disagreement with Dr. Pappas. OWCP's decision denying hearing aids provided no findings for why hearing aids were not authorized.

OWCP must provide appellant with a statement of reasons as to why a claim is being denied. The Board finds that the decision dated February 5, 2015 did not meet that requirement and OWCP abused its discretion in issuance of the decision.¹⁹

Accordingly, the case will be remanded to OWCP for further development on the question of whether appellant is entitled to hearing aids.²⁰ Following this and such other

¹² See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹³ 5 U.S.C. § 8103.

¹⁴ *R.P.*, Docket No. 15-0703 (issued June 1, 2015); see also *W.M.*, 59 ECAB 132 (2007).

¹⁵ See *F.D.*, Docket No. 10-1175 (issued January 4, 2011).

¹⁶ 20 C.F.R. § 10.126 (2012).

¹⁷ *R.N.*, Docket No. 13-284 (issued July 3, 2013).

¹⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1995); *Raymond VanNett*, 44 ECAB 480 (1993).

¹⁹ *Supra* note 16; see also *R.P.*, note 14.

²⁰ *G.M.*, Docket No. 11-1295 (issued January 25, 2012).

development as is deemed necessary, OWCP shall issue an appropriate merit decision regarding his entitlement to hearing aids.²¹

CONCLUSION

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes. The Board also finds that the case is not in posture for decision as to whether hearing aids should be authorized.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside in part for further development of the medical evidence.

Issued: July 7, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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