

establish more than six percent binaural hearing loss for which he received a schedule award.² By decision dated September 13, 2007, the Board set aside OWCP's February 8, 2007 decision which denied appellant's request for reconsideration as it was untimely filed and failed to present clear evidence of error, and remanded the case for handling under the proper standard consistent with OWCP's procedures.³ By decision dated August 7, 2008, the Board set aside its December 20, 2007 decision for further development to determine whether appellant's increased hearing loss was causally related to his noise exposure.⁴ The facts and history as stated in the Board's prior decisions are hereby incorporated by reference.

By decision dated October 9, 2008, OWCP awarded appellant an additional 48 percent impairment for a total binaural impairment of 54 percent. The additional award ran for 96 weeks of compensation for the period April 2, 2002 to February 2, 2004.

On September 22, 2014 appellant filed a claim for an increased schedule award by Form CA-7. No new evidence was submitted along with the claim.

In a September 26, 2014 letter, OWCP advised appellant of the deficiencies in his claim and requested that he submit additional factual and medical information, including any audiograms taken since 2008. It requested that he explain any hazardous noise exposure since last working at the employing establishment on October 2, 1989. OWCP also requested that appellant list his hobbies outside of his employment.

In an October 7, 2014 statement, appellant responded to OWCP's questions and stated that the employing establishment was the last place he worked. He indicated that his hearing had worsened and he now wore two hearing aids. Appellant submitted a July 22, 2014 note from Dr. Bernard Buchanan, a Board-certified internist, finding appellant medically cleared for hearing aids, a July 10, 2014 hearing health report and a July 10, 2014 audiometric test.

In an October 30, 2014 letter, an OWCP medical adviser reviewed a July 10, 2014 audiogram and stated that it did not conform to OWCP's specifications. He recommended that OWCP generate a statement of accepted facts and refer appellant for a second opinion evaluation.

On November 3, 2014 OWCP received a September 10, 2014 audiogram.

² Docket No. 03-2048 (issued December 19, 2003). On September 4, 2001 appellant, then a 55-year-old machinist, filed an occupational disease claim for hearing loss. He first became aware of his employment-related hearing loss in 1988. Appellant explained that he hit his ear in 1986 with a wrench and, after being treated for over a year, his doctor advised him to have surgery to repair his eardrum. A claim for that condition was filed in 1992. Since his surgery, appellant stated that his hearing has not returned. The record reflects that he worked at the employing establishment between April 1978 and October 1989, where he was exposed to loud noises from turbines eight hours daily. By decision dated January 18, 2002, OWCP granted a schedule award for six percent binaural hearing loss.

³ Docket No. 07-1015 (issued September 13, 2007).

⁴ Docket No. 08-698 (issued August 7, 2008).

OWCP referred appellant, a November 21, 2014 statement of accepted facts, and list of questions, to Dr. William J. Brown, a Board-certified audiologist, and Dr. Andrew S. Mickler, a Board-certified otolaryngologist, for a second opinion evaluation. Appellant did not attend the second opinion evaluation due to distance and other health issues.

On December 19, 2014 OWCP provided appellant with Form 1322, Outline for Otologic Evaluation, for his treating physician to complete. On December 22, 2014 Sheila Elliott-Rich, an audiologist, completed the Form 1322 based on September 10, 2014 audiometric test results.

In a January 5, 2015 report, the medical adviser stated that recalculation of an award was not indicated in this case. He noted that the November 21, 2014 statement of accepted facts reflected that appellant had retired from federal employment in 1989 and was last exposed to noise on the job at that time. The medical adviser advised “it is accepted that hearing loss consequential to noise does not progress following removal from the source of that noise. Therefore, any loss of hearing after 1989 cannot be work related, and any deterioration of hearing since 1989 is not due to work factors.”

By decision dated January 5, 2015, OWCP denied entitlement to an additional schedule award. Determinative weight was accorded to the medical adviser’s report.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing federal regulations⁶ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to rate permanent impairment.⁸

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 and averaged.⁹ The fence of 25 decibels is then 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

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ A.M.A., *Guides*, *supra* note 2 at 250.

¹⁰ *Id.*

¹¹ *Id.*

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.¹² The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹³

OWCP procedures set forth requirements for the medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Further, all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report is to include date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure, and a statement of the reliability of the tests.¹⁴

The Board has recognized that, if a claimant's employment-related hearing loss worsens in the future, the employee may apply for an additional schedule award for any increased impairment.¹⁵ The Board has also recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.¹⁶

ANALYSIS

On October 9, 2008 appellant received a schedule award for a total binaural impairment of 54 percent. He subsequently requested an increased schedule award. By decision dated January 5, 2015, OWCP denied an additional schedule award.

The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased

¹² *Id.* at 251.

¹³ *Horace L. Fuller*, 53 ECAB 775 (2002).

¹⁴ *Luis M. Villanueva*, 54 ECAB 666 (2003). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995).

¹⁵ *Paul Fierstein*, 51 ECAB 381 (2000); *Paul R. Reedy*, 45 ECAB 488 (1994). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b)(2) (April 1995). If, on the other hand, the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period.

¹⁶ *Id.*

permanent impairment.¹⁷ The Board has also recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.¹⁸

Appellant submitted a July 22, 2014 note from Dr. Buchanan medically clearing him for hearing aids and a July 10, 2014 hearing health report; however, none of these reports provide a well-rationalized medical opinion that appellant has experienced additional hearing loss causally related to his employment-related hearing loss.

Appellant also submitted audiometric testing dated July 10 and September 10, 2014 and a December 22, 2014 Form 1322 completed by Sheila Elliott-Rich, an audiologist. However, the audiograms were not accompanied by a physician's opinion addressing how the employment-related noise exposure caused or aggravated any additional hearing loss. As such this evidence failed to constitute competent medical evidence.¹⁹

The Board notes that OWCP attempted to send appellant for a second opinion evaluation with an audiologist and an otolaryngologist, but appellant did not attend.

The Board finds that appellant has not established an increase in bilateral sensorineural hearing loss causally related to his federal employment.

On appeal, appellant contends that his bilateral hearing loss was causally related to exposure in his federal employment and has increased little by little since he left federal employment. He states that hearing problems do not run in his family and he has to wear hearing aids or he cannot hear. Appellant argues that he should be compensated for his loss in hearing. As discussed, however, the audiograms and evidence submitted in his claim do not constitute probative medical evidence showing progression of an employment-related condition resulting in increased impairment.

CONCLUSION

The Board finds that appellant did not establish more than 54 percent total binaural impairment, for which he received a schedule award.

¹⁷ *Paul R. Reedy, supra* note 15.

¹⁸ *J.R.*, 59 ECAB 710, 713 (2008).

¹⁹ *Id.* See also *H.M.*, Docket No. 13-1061 (issued July 29, 2013); *M.T.*, Docket No. 12-1294 (issued December 6, 2012). 5 U.S.C. § 8101(2); *M.P.*, Docket No. 13-1790 (issued December 17, 2013) (an audiologist is not a physician under FECA and the audiologist's opinion regarding the medical cause of a claimant's hearing loss is of no probative medical value).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 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