

**United States Department of Labor
Employees' Compensation Appeals Board**

W.P., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 15-840
Issued: June 16, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 2, 2015 appellant filed a timely appeal of a January 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

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

FACTUAL HISTORY

On September 17, 2014 appellant, then a 34-year-old heavy mobile equipment mechanic, filed an occupational disease claim alleging that he had developed bilateral hearing loss and ringing in both ears. He stated that he first became aware of his condition on February 2, 2013 and first realized that this was caused or aggravated by his employment on September 2, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

In a letter dated September 29, 2014, OWCP requested that appellant provide additional factual and medical information in support of his claim. Appellant indicated that he worked at the employing establishment from 2003 to 2014 as a heavy mobile equipment mechanic and that he was exposed to noise from impact, air ratchet, hammers and compressed air. He stated that he wore ear protection and his only outside noise exposure was to his lawn mower. On September 4, 2014 appellant stated that he worked building turbine engines and that his hearing loss began around February 2, 2013. He noted that his employing establishment testing revealed hearing loss and tinnitus.

Appellant provided the health records from his employing establishment which indicated that he had sought treatment for an audiological evaluation due to a possible bilateral significant threshold shift. In a note dated September 2, 2014, he reported constant tinnitus for one year. Appellant's audiogram revealed mild-to-moderate sensorineural hearing loss in both ears.

The employing establishment stated that appellant was exposed daily to 85 decibels on 14 percent of his workdays from 2003 to 2014. Appellant wore hearing protection when required.

OWCP referred appellant for a second opinion examination on December 9, 2014 with Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist. In a report dated January 8, 2015, Dr. Pappas noted appellant's two-year history of ringing in both ears. He described appellant's employment duties of building turbine engines. Dr. Pappas found that appellant's audiogram demonstrated a moderate high frequency loss. He found that appellant's hearing loss was not ratable. Dr. Pappas diagnosed sensorineural hearing loss and tinnitus. He stated, "The patient's hearing loss pattern, age, and noise exposure history are consistent with noise[-]induced damage. There is severe notching of the audiometric pattern supporting this diagnosis."

Appellant's audiogram demonstrated testing at 500, 1,000, 2,000, and 3,000 cycles per second (cps) and revealed on the right decibel losses of 5, 5, 5, and 40 respectively and on the left 5, 5, 5, and 0 respectively.

An OWCP medical adviser reviewed Dr. Pappas' report and appellant's audiogram on January 20, 2015. He found that appellant had a binaural sensorineural hearing loss and that in the right ear appellant's total decibel loss at 500, 1,000, 2,000, and 3,000 cps was 55 decibels and the average loss was 13.75. When the fence of 25 was subtracted, appellant had a negative balance and a zero percent monaural loss of hearing on the right. In the left ear, appellant's decibel losses totaled 15 and when averaged were 3.75. When the fence of 25 was subtracted appellant had a zero percent monaural loss of hearing on the left.

By decision dated January 22, 2015, OWCP denied appellant's claim for a schedule award finding that his binaural hearing loss was not severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for

² 5 U.S.C. §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

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 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.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 cps, the losses at each frequency are added up and averaged. 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. 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.⁵

If tinnitus interferes with activities of daily living, including sleep, reading and other tasks requiring concentration, enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a ratable binaural hearing impairment.⁶

ANALYSIS

Dr. Pappas determined that appellant sustained bilateral hearing loss due to his exposure to noise in the workplace. The case was sent to an OWCP medical adviser who concluded that appellant had no ratable hearing impairment. He properly applied OWCP's standards to Dr. Pappas' January 8, 2015 audiogram. The test recorded frequency levels at the 500, 1,000, 2,000, and 3,000 cps levels and revealed decibel losses of 5, 5, 5, and 40 respectively in the right ear producing a total decibel loss of 55 on the right. The medical adviser then followed established procedures and divided this total by 4 which resulted in an average loss of 13.75 decibels and then subtracted the fence of 25 decibels to equal 0 decibels. He multiplied this by the established factor of 1.5 and demonstrated a 0 percent monaural hearing loss for the right ear. The medical adviser then properly followed the same procedure on the left, noting that left ear results at the frequencies of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 5, 5, 5, and 0 decibels respectively, for a total of 15 decibels. He divided this by 4, for an average hearing loss of 3.75 decibels, subtracted the fence of 25 decibels to equal 0 decibels. The medical adviser multiplied this by the established factor of 1.5, for a zero percent monaural

⁴ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ See *D.D.*, Docket No. 15-193 (issued May 11, 2015); *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ A.M.A., *Guides* 249

hearing loss for the left ear. The medical adviser determined that appellant had zero percent binaural hearing loss.

The Board finds that Dr. Pappas properly calculated hearing impairment. The medical adviser used those findings and properly applied the A.M.A., *Guides* to arrive at the zero percent binaural hearing loss. The Board finds that their reports were thorough, detailed and demonstrated a proper application of the A.M.A., *Guides*. Appellant has not established that he has a ratable hearing loss and is not entitled to a schedule award for his nonratable loss of hearing or his tinnitus.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 has not established that a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT January 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁷ *Id.*