

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

---

**W.H., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 15-170  
Issued: March 18, 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 November 3, 2014 appellant filed a timely appeal from an October 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish a ratable impairment caused by the accepted noise-induced hearing loss that would warrant a schedule award.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 31, 2014 appellant, then a 57-year-old materials engineering technician, filed an occupational disease claim (Form CA-2) alleging that noise exposure at work caused hearing loss.

In letters dated February 12, 2014, OWCP informed appellant of the evidence needed to support his claim. It asked that the employing establishment provide information regarding his noise exposure and hearing conservation measures.

The employing establishment submitted hearing conservation data from January 10, 1983 through September 13, 2013. It also submitted appellant's employment record and a noise assessment worksheet.

In a report dated January 15, 2014, Dr. Richard W. Seaman, a Board-certified otolaryngologist, diagnosed appellant with bilateral sensorineural hearing loss and tinnitus. Based upon the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) he rated appellant's hearing loss as zero percent on the left, zero percent on the right, a binaural loss of zero percent, and a tinnitus rating of zero percent. Dr. Seaman recommended that appellant would benefit from the use of hearing aids and stated that his hearing loss was probably due in significant measure to occupational noise damage.

On July 14, 2014 OWCP referred appellant to Dr. Gerald Randolph, a Board-certified otolaryngologist, to determine the nature and extent of appellant's hearing loss and its relationship to his federal employment. In a report dated August 8, 2014, Dr. Jackson Holland, a Board-certified otolaryngologist, reviewed appellant's noise exposure at work, the statement of accepted facts and the medical records.<sup>2</sup> He noted that appellant worked as a boiler maker, pipe fitter, and mechanic from 1982 until his full retirement in May 2014. On examination, appellant's ears appeared normal. Dr. Holland submitted a calibration certification and the results of audiometric testing performed by a certified audiologist. The audiogram performed on August 4, 2014 reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) and revealed the following: right ear 10, 15, 25, and 40 decibels (dBs); left ear 5, 15, 25, and 35 dBs, respectively. Dr. Holland noted that appellant had a binaural impairment rating of zero percent, but advised that tinnitus was present and recommended a tinnitus rating score of two percent. He checked a box indicating that appellant's hearing loss was due to noise exposure encountered in his federal employment, and recommended that appellant use hearing aids on a trial basis.

By decision dated August 27, 2014, OWCP accepted that appellant sustained bilateral hearing loss due to employment-related noise exposure and bilateral tinnitus.

On September 30, 2014 OWCP authorized hearing aids for appellant.

---

<sup>2</sup> The Board notes that Dr. Holland is not the physician to whom appellant was initially referred for a second opinion evaluation. The case record is devoid of an explanation as to why appellant met with Dr. Holland instead of Dr. Randolph.

In a report dated September 30, 2014, Dr. Kenneth Sawyer, an OWCP medical adviser, reviewed the reports of Drs. Seaman and Holland. He advised that the date of maximum medical improvement was August 4, 2014 and determined that appellant's binaural hearing loss was not severe enough to be ratable under the sixth edition of the A.M.A., *Guides*.<sup>3</sup> Dr. Sawyer disagreed with Dr. Holland's recommendation of a two percent impairment for tinnitus. He explained that the sixth edition of the A.M.A., *Guides* allowed an impairment rating for tinnitus only in the presence of hearing impairment. Dr. Sawyer recommended authorization of hearing aids.

On October 3, 2014 appellant requested a schedule award.

By decision dated October 6, 2014, OWCP found that appellant was not entitled to a schedule award because the extent of his hearing loss was not severe enough to be ratable. It noted that the sixth edition of the A.M.A., *Guides* allowed for an impairment rating for tinnitus only in the presence of a hearing impairment.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> 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.<sup>6</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>8</sup> 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

---

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>7</sup> *Supra* note 5; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

<sup>8</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

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.<sup>10</sup> The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living (ADLs), 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 measurable binaural hearing impairment.<sup>11</sup>

### ANALYSIS

The Board finds that the evidence of record does not establish that appellant has a ratable hearing loss based on his accepted bilateral hearing loss and tinnitus. The August 4, 2014 audiogram results did not demonstrate ratable values, and this audiogram was the only one interpreted in accordance with the sixth edition of the A.M.A., *Guides*. Dr. Seaman's January 15, 2014 report did not include the actual results from an audiogram, and his impairment ratings were interpreted according to the fifth edition of the A.M.A., *Guides*.

The August 4, 2014 audiogram is the only study that complied with OWCP certification procedures. It demonstrated record values at the frequency levels of 500, 1,000, 2,000, and 3,000 cps of 10, 15, 25, and 40 dBs on the right for a total of 90 dBs. This figure, when divided by four, results in an average hearing loss of 22.5 dBs. The average of 22.5 dBs, when reduced by the 25-dB fence, results in zero percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000, and 3,000 cps revealed dB losses of 5, 15, 25, and 35 dBs, for a total of 80 dB. This figure, when divided by four, results in an average hearing loss of 20 dB, which, when reduced by the 25-dB fence, results in zero percent monaural hearing loss of the left ear. The Board finds that, as the August 4, 2014 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted hearing loss condition. While OWCP accepted tinnitus as a condition under appellant's claim, tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.<sup>12</sup>

Appellant may request a 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.

---

<sup>9</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>10</sup> See A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009).

<sup>11</sup> *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

<sup>12</sup> See *Juan A. Trevino*, 54 ECAB 358, 360 (2003).

**CONCLUSION**

The Board finds that appellant did not establish that he is entitled to a schedule award for his employment-related hearing loss, as his hearing loss was not ratable.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 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